



City of Albuquerque

City of Albuquerque
Government Center
One Civic Plaza
Albuquerque, NM 87102

Legislation Details (With Text)

File #: O-15-57
Type: Ordinance
File created: 6/22/2015
Status: Withdrawn
In control: City Council
Final action: 8/17/2015
Enactment date:
Enactment #:
Title: Adopting The Albuquerque Fair Workweek Act (Peña, Benton)
Sponsors: Isaac Benton, Klarissa J. Peña
Indexes:
Code sections:
Attachments: 1. O-57

Date	Ver.	Action By	Action	Result
8/17/2015	1	City Council	Accepted	Pass
6/22/2015	1	President	Referred	
6/22/2015	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE TWENTY-FIRST COUNCIL

COUNCIL BILL NO. O-15-57 ENACTMENT NO. _____

SPONSORED BY: Klarissa J. Peña and Isaac Benton

ORDINANCE

Adopting The Albuquerque Fair Workweek Act (Peña, Benton)

The Council makes the following findings:

WHEREAS, most of Albuquerque's workforce juggles responsibilities at home and at work but often have little ability to change their work schedules to accommodate family responsibilities, continuing education, medical appointments, or other important obligations; and

WHEREAS, many employers have adopted "just-in-time" scheduling, which gives employees little advance notice of their work schedules, and "on-call" scheduling, which often leads to cancelled or shortened shifts, thus affecting other work opportunities and incurring additional travel or childcare costs; and

WHEREAS, approximately two-thirds of Bernalillo County's workforce is paid on an hourly basis, and according to a national survey of early-career hourly workers (ages 26-32), 41 percent of such employees know their schedules a week or less in advance, half said their schedules were decided solely by their employer, and nearly three-quarters of hourly workers reported that their weekly hours fluctuate significantly; and

WHEREAS, hourly workers are more likely than salaried workers to have multiple jobs, work part time or have variable hours, part-time hourly employees are ten times as likely to want more hours, women are particularly likely to hold part-time jobs, and low-wage part-time workers often do not earn enough to meet their basic needs for housing, food, shelter, and health care; and

WHEREAS, erratic hours, long shifts, and inadequate rest between shifts can result in sleep deprivation and fatigue, impairing decision-making, coordination, and reaction time; and

WHEREAS, highly fatigued workers are 70 percent more likely to be involved in a workplace accident, and work-related sleep disruption also contributes to car accidents; and

WHEREAS, erratic work schedules compounded by sleep loss, have been tied to poor mental health and increased risk for hypertension, cancer, diabetes, and cardiovascular disease; and

WHEREAS, all workers at some time during each year need limited time off from work to take care of their own health needs or those of family members, and that approximately 40% of private sector US workers lack paid sick time, and that one in six employees report that they or a family member has been fired, suspended, punished or threatened by an employer because they needed to take sick time to care for themselves or a family member; and

WHEREAS, workers in jobs with high public contact, such as service, restaurant, and retail employees, are unlikely to have paid sick time, thereby increasing their risk of passing illnesses to co-workers and customers; and

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

WHEREAS, employers that have implemented fair scheduling policies that allow earned sick leave, more employee voices in work schedules, predictable schedules, have experienced significant benefits including reduced absenteeism and turnover and increased employee morale; and

WHEREAS, fair scheduling practices will safeguard the public welfare, health, safety, and

prosperity of the people of Albuquerque by promoting employee input into predictable schedules that allow workforce training, career enhancement, reduced stress, reliable care for young and elderly dependents, and allow parents to establish stable routines that promote children's well-being; and

WHEREAS, hourly employees who can access more hours at their part-time jobs will be less likely to rely on public benefits, and

WHEREAS, the right to earn sick leave will reduce recovery time from illnesses, promote the use of regular medical providers rather than emergency care, and prevent people from spreading illness to the public.

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

SECTION 1. A new Article 16, the "Albuquerque Fair Workweek Act," is hereby added and adopted within Chapter 13, "Business and Occupations," as follows:

§ 13-16-1 SHORT TITLE.

This article may be cited as "the Albuquerque Fair Workweek Act."

§ 13-16-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning or another definition is provided:

- A. CITY. The City of Albuquerque.
- B. DEPARTMENT. The office of the City Attorney, unless the mayor designates a different city agency, office, department, division, bureau or institution of government.
- C. DOMESTIC PARTNER. A person with whom another person maintains a household and an intimate relationship, without a legally recognized marriage.
- D. DOMESTIC VIOLENCE. All crimes described in NMSA sections 30-3-11 et. seq.
- E. EMPLOYEE. (1) An EMPLOYEE is any person who an employer suffers or permits to perform work for that employer for monetary compensation for at least 56 hours in a calendar year within the municipal limits of the city. EMPLOYEE shall include persons who perform work for an employer on a full-time, part-time, seasonal, or temporary basis. EMPLOYEE shall not include any person who is excluded from the definition of employee under NMSA §§ 50-4-21(c)(3)-(4) of the New Mexico Minimum Wage Act, except that persons employed by the City of Albuquerque are employees. EMPLOYEE shall not include interns working without compensation for an employer for academic credit in connection with a course of study at an accredited school, college

or university or employees working for an accredited school, college or university pursuant to a work-study program while attending that school, college or university. EMPLOYEE shall not include any person who has received a certificate from the state labor commissioner pursuant to § 50-4-23 NMSA 1978 or § 50-4-21(c)(12) NMSA 1978.

(2) For purposes of Sections 13-16-3[advance notice of schedules], 13-16-4 [compensation for changed shifts], 13-16-6 [right to rest], 13-16-8 [retention pay], and 13-16-9 [offer of work to existing employees] of this article, EMPLOYEE shall not include individuals employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors.

F. EMPLOYER. An EMPLOYER is as defined by NMSA §§ 50-4-21(b), provided that EMPLOYER shall include the City of Albuquerque.

G. FAMILY MEMBER. A FAMILY MEMBER is:

(1) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis.

(2) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child.

(3) A person to whom the employee is legally married under the laws of any state.

(4) A grandparent or spouse or domestic partner of a grandparent;

(5) A grandchild;

(6) A biological, foster, or adopted sibling or spouse or domestic partner of a biological, foster or adopted sibling;

(7) A domestic partner; or

(8) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

H. FLEXIBLE WORKING ARRANGEMENT. A schedule that reflects an employee's request for accommodation, including but not limited to a modified work schedule, additional shifts or hours, changes in days of work or start and/or end times for the work day or a work shift, a predictable, stable work schedule, permission to exchange work shifts with other employees, limitations on availability, part-time employment, job sharing arrangements, working from home, telecommuting, the location where the employee is required to work, reduction or change in work duties, or part-year employment.

I. HEALTH CARE PROFESSIONAL. Any person licensed under federal or New Mexico law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.

J. INTERACTIVE PROCESS. A timely and good faith process involving the employer and employee to assess the feasibility of a request for a flexible work arrangement that includes a discussion of potential schedule changes to meet the employee's needs. During that process both the employee and employer may propose alternatives in an attempt to reach a mutually beneficial arrangement.

K. ON-CALL SHIFT or ON-CALL HOURS. Time that an employer requires an employee to be available to work, and to contact the employer or its designee or wait to be contacted by the employer or its designee to determine whether the employee must report to work at that time.

L. PAID SICK TIME. Time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in section 13-16-10 of this article, but in no case shall the hourly wage be less than that provided in Chapter 13, Article 12 of the Albuquerque Code of Ordinances.

M. PREDICTABILITY PAY. Payments to an employee, calculated on an hourly basis at the employee's regular rate of pay, as compensation for changes made by an employer to an employee's schedule pursuant to section 13-16-4 of this article. An employer must pay an employee PREDICTABILITY PAY, when required by this article, in addition to any wages earned for work performed by that employee.

N. RETALIATION. Any form of intimidation, reprisal, harassment, or adverse employment action. It is RETALIATION for an employer to do any of the following with respect to an employee: discipline; discharge; suspend; refuse to hire; transfer or assign the employee to a lesser position in terms of job classification, job security, or other condition of employment; reduce pay or hours or deny additional hours; or inform another employer that the person has engaged in activities protected by this article.

O. SEXUAL ASSAULT. All crimes described in NMSA Sections 30-9-11 through 30-9-13.

P. SHIFT. The consecutive hours an employer requires an employee to work or to be on call to work, provided that breaks totalling two hours or less shall not be considered an interruption of consecutive hours.

Q. STALKING. All crimes described in NMSA 30-3A-1 et.seq.

R. WORK SCHEDULE. All of an employee's regular and on-call shifts during a consecutive seven-day period.

§ 13-16-3 ADVANCE NOTICE OF WORK SCHEDULES.

A. Upon hiring, an employer shall provide each employee with a good faith estimate in writing of the number of hours and the days and times the employee is expected to work each week. The schedule shall be established through an interactive process.

B. An employer shall give each employee his or her individual work schedule in writing at least 21 days prior to the first day of that work schedule. On or before the commencement of employment, the employer shall provide the employee with a written work schedule for the employee's first 21 days.

C. An employer cannot schedule an employee to work hours not included in the written work schedule required by subsection (b) of this section without the employee's consent. Consent must be recorded in writing at or before the start of the shift for which consent is required. The employer must contact the employee to notify him or her of any other change to the employee's work schedule prior to the change taking effect and must provide the employee with a revised written work schedule reflecting any changes within 24 hours of making the change.

D. The employer shall post 21 days in advance of the start of each week a written schedule that includes the shifts of all current employees at that worksite, whether or not they are scheduled to work or be on call that week. The employer must update that posted schedule within 24 hours of any change. The schedule must be posted in a place that is readily accessible and visible to all employees of the employer at that worksite.

E. An employee's work schedule must begin on the same day of the week each week, unless the employer provides 21 days advance written notice of a change in the start day of the work schedule.

F. An employer may not require an employee to search for or find a replacement employee to cover any hours during which an employee is unable to work a scheduled shift.

§ 13-16-4 COMPENSATION FOR CHANGED SHIFTS.

A. Less than 21 days and more than 24 hours before the first scheduled hour of a shift, an employer may subtract hours from a shift, cancel a shift, change the start or end time of a shift, or add hours of work as permitted by sections 13-16-3(c) and 13-16-9(c), provided that the employer pays the employee one hour of predictability pay, in addition to wages earned, for each shift that is changed as permitted in this subsection.

B. An employer is required to pay an employee for a minimum of four hours or the number of hours in the employee's scheduled shift, whichever is less, at the employee's regular rate of pay, on any day that the employee (i) reports for duty or (ii) is notified less than 24 hours before a regular or on-call shift that the employee does not need to report to work or that the hours in the shift have been reduced.

C. The provisions of subsections 13-16-3(c) and 13-16-4(a)-(b) shall not apply to any shift changes made at the request of the employee, including employee-initiated requests to work specific hours other than those scheduled by the employer or requests to use sick leave, vacation time, personal days, or other leave policies offered by the employer, or when a schedule change is the result of a mutually agreed upon shift trade among employees.

§ 13-16-5 RIGHT TO REQUEST FLEXIBLE WORKING ARRANGEMENT.

A. An employee has a right, once in each calendar quarter, to request a flexible working arrangement. The request must be in writing.

B. An employer shall consider the employee's request for a flexible working arrangement in good faith and engage in an interactive process with the employee to consider the request and determine whether the request can be granted. If information provided by the employee making a request for a flexible working arrangement requires clarification, the employer shall explain what further information is needed and give the employee reasonable time to produce the information.

C. Unless the employer has a bona fide business reason not to grant the employee's request for a flexible working arrangement, the request shall be granted if it is based on the employee's:

1. Serious health condition;
2. Caregiving responsibilities for a family member; or
3. Participation in a career-related educational or training program.

D. As used in this section, "bona fide business reason" may include:

1. An inability to reorganize work among existing employees;
2. An insufficiency of work during the periods the employee has proposed to work;
3. Substantial cost to the employer;
4. Scheduling requests from more than one employee that, if granted, would result

in an inability to reorganize work among existing employees.

E. The employer shall notify the employee of the decision to grant or deny the request in writing and, in the case of any full or partial denial, shall include an explanation of the reasons for

that denial.

§ 13-16-6 RIGHT TO REST.

A. Adequate daily rest. An employee has the right to decline work hours that occur: (i) less than 11 hours after the end of the previous day's shift or (ii) during the 11 hours following the end of a shift that spanned two days.

B. Adequate weekly rest. An employee has the right to decline to work (i) more than 55 hours during any seven-day period or (ii) more than six consecutive days.

C. Overwork compensation. An employee who agrees in writing to work hours described in subsections (a) and (b) of this section shall be compensated at one-and-a-half times the employee's regular rate of pay for any such hours worked.

D. Daily overtime. Except as provided herein, an employee who works more than eight hours in one shift shall be compensated at one-and-a-half times the employee's regular rate of pay for each hour worked in excess of eight hours, in addition to any overtime pay required under state or federal law.

1. No employer shall be deemed to have violated this provision by instituting a regularly scheduled alternative workweek schedule of up to four ten-hours shifts per week or up to three twelve-hour shifts per week without the payment of an overtime rate of compensation. All work performed in any workday beyond the regular daily shift shall be paid at one and one-half times the employee's regular rate of pay.

2. The alternative workweek schedule must be adopted in a secret ballot election by at least a two-thirds vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. Affected employees may repeal an alternative workweek schedule. Upon filing a petition of one-third of the affected employees, a new secret ballot election shall be held and a two-thirds vote of the affected employees shall be required to reverse the alternative workweek schedule.

E. Meal periods and rest breaks. An employer may not employ an employee for a shift of more than five hours per day without providing the employee with a meal period. An employer may not employ an employee for a shift of more than 10 hours per day without providing the employee with a second meal period. Meal periods shall be unpaid, uninterrupted, and last at least 30 minutes, during which time the employee shall be fully relieved of all work duties. Meal periods may be waived by mutual written consent of both the employer and employee. An employer may not employ an employee for a shift of more than 4 hours without providing the

employee at least a 10 minute paid rest break for each 4 hours worked, in addition to meal periods required by this subsection.

§ 13-16-7 EQUAL TREATMENT FOR EMPLOYEES REGARDLESS OF HOURS WORKED.

A. An employer shall provide the same (i) regular rate of pay, (ii) eligibility to accrue employer-provided paid and unpaid time off and other benefits, provided that accrual may be proportional to hours worked, and (iii) promotion opportunities and other conditions of employment, to employees who perform work that requires substantially equal skill, effort, responsibility, and duties and is performed under similar working conditions, regardless of the number of hours that an employee is scheduled to work or expected duration of employment.

B. This subsection shall not be construed to prohibit differences in hourly wages based on reasons other than the number of hours the employee is scheduled to work or expected duration of employment, including on the basis of seniority, a merit system, or a system which measures earnings by quantity per hour or quality of production.

C. Upon written request by an employee, an employer shall provide a written explanation of that employee's wage rate, benefits, denial of promotion opportunities or other conditions of employment.

D. An employee has the right to inquire about, disclose, or discuss his or her wages and those of other employees. An employer may not require an employee to waive the rights afforded by this subsection.

§ 13-16-8 RETENTION PAY.

A. Except as provided in subsection (b), employers must pay all employees retention pay of \$150.00 in each 14 day period. Retention pay shall be offset by any amounts paid to the employee for hours worked or paid time off, including paid vacation, sick days, personal days, family leave or other paid leave.

B. An employee who, with the employer's consent, does not work or takes unpaid leave during a particular week may waive the requirement of subsection (a), provided that the employee designates in writing the specific week or weeks for which retention pay is waived.

C. On January 1, 2017, and each year thereafter, the retention pay required by this section shall increase shall be adjusted based on the increase, if any, in the cost of living, and rounded to the nearest multiple of five cents. The increase in the cost of living shall be calculated based on the percentage increase, if any, as of August of the immediately preceding year over the level as

of August of the previous year of the Consumer Price Index (All Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency. The city shall publish the adjusted retention pay for the forthcoming year on its Internet home page by October 15 of each year, and it shall become effective on January 1 of the forthcoming year.

§ 13-16-9 OFFER OF WORK TO EXISTING EMPLOYEES.

A. An employer must offer additional hours of work to existing employees before hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies.

B. The employer must post a notice of available work, including the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, and the length of time the employer anticipates requiring coverage of the additional hours.

1. Before an employer may hire additional employee(s), either directly or through a temporary services or staffing agency, with a duration of employment longer than seven consecutive days, the employer must post a notice of available hours for at least seven days before the employer may proceed with that hiring.

2. Before an employer may hire additional employee(s), either directly or through a temporary services or staffing agency, with a duration of employment less than seven consecutive days, the employer must post a notice of available hours for at least two days before the employer may proceed with that hiring.

3. The employer shall post a notice in the workplace identifying the process by which employees may notify the employer of their desire to work the offered hours and the criteria the employer will use for distribution of hours, provided that the employer's system for distribution of hours must not discriminate on the basis of race, ethnicity, national origin, gender or gender identity, sexual orientation, age, religion, parental status, family caregiving responsibilities, or status as a student. The employer shall update the notice if the employer changes the criteria for distribution.

4. The notices required by this section shall be posted (1) in a conspicuous place at the workplace that is readily accessible and visible to all employees, or (2) transmitted by electronic means, so long as all employees are given access to the electronic notice at the workplace.

5. The posting requirements of this subsection shall not apply to (1) offers to extend a scheduled shift (2) offers of hours made less than two days before the start of the offered shift.

C. The employer shall assign additional hours of work to a qualified employee who has responded to the offer of work. If more than one qualified employee has responded to the offer of work, the employer shall distribute the work among interested employees according to the employer's posted process. An employee's response to the offer of work shall serve as written consent to the addition of those hours, if such consent is required by section 13-16-3(c).

D. For purposes of this section, "qualified employees" means existing employees of the employer who in the employer's good faith and reasonable judgment have the skills and experience to perform the work.

E. Employers shall make reasonable efforts to offer existing employees training opportunities to gain the skills and experience to perform work for which the employer typically has additional needs.

F. This section shall not be construed to require any employer to offer overtime work paid at a premium rate to existing employees, nor to prohibit any employer from offering such overtime work.

G. When hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies, the employer shall document the time and method of offering the additional hours of work to existing staff. Failure to preserve documentation pursuant to this subdivision for three years after the date of hiring employees or subcontractors shall give rise to a rebuttable presumption of a violation of this section.

§ 13-16-10 PAID SICK TIME.

A. **Accrual of Paid Sick Time.** All employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked. Employees will not accrue more than 56 hours of paid sick time in a calendar year, unless the employer selects a higher limit.

1. Employees who are exempt from overtime requirements under 29 U.S.C. § 213 (a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.

2. Paid sick time as provided in this section shall begin to accrue at the commencement of employment.

3. Employees shall be entitled to use accrued paid sick time beginning on the 90th

calendar day following commencement of their employment. After the 90th calendar day of employment, employees may use paid sick time as it is accrued.

4. Paid sick time shall be carried over to the following calendar year; however, an employee's use of paid sick time provided under this Act in each calendar year shall not exceed 56 hours unless the employer chooses a higher limit.

5. Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as paid sick time under this Act is not required to provide additional paid sick time.

6. Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick time that has not been used.

7. If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity or location and is entitled to use all paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick time and accrue additional sick time at the re-commencement of employment.

8. At its discretion, the employer may loan sick time to an employee in advance of accrual by such employee.

B. Use of Paid Sick Time. Paid sick time shall be provided to an employee by an employer for:

1. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

2. Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care;

3. Closure of the employee's place of business by order of a public official due to a

public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

4. Absence necessary due to domestic violence, sexual assault or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

- a. Medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence; or
- b. Services from a victim services organization; or
- c. Psychological or other counseling; or
- d. Seek relocation due to the domestic or sexual violence or stalking; or
- e. Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.

C. Paid sick time shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence.

D. When the use of paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the sick time and shall make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the operations of the employer.

E. Accrued sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time, whichever is smaller.

F. Documentation. For sick time of more than 3 consecutive days, an employer may require reasonable documentation that the sick time has been used for a purpose covered by subsection (b). Documentation signed by a health care professional indicating that sick time is necessary shall be considered reasonable documentation. A police report indicating that the employee was a victim of domestic violence, stalking or sexual assault; a court order; or a signed statement from a victim and witness advocate affirming that the employee is involved in legal action related to domestic violence, stalking or sexual assault shall be considered reasonable

documentation. An employer may not require that the documentation explain the nature of the illness or the details of the violence. If an employer chooses to require documentation for sick time and the employee does not have health insurance, the employer is responsible for paying all out of pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.

G. Confidentiality and Nondisclosure. An employer may not require disclosure of details relating to domestic violence, sexual assault or stalking or the details of an employee's or an employee's family member's medical condition as a condition of providing paid sick time under this Act. If an employer possesses health information or information pertaining to domestic violence, sexual assault or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

§ 13-16-11 EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

A. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article.

B. An employer shall not retaliate or discriminate against an employee because the employee has exercised rights protected under this article. Such rights include but are not limited to the right to decline hours of work pursuant to this article; the right to use paid sick time pursuant to this article; the right to request a flexible working arrangement pursuant to this article; the right to file a complaint or inform any person about any employer's alleged violation of this article; the right to cooperate with the Department in its investigations of alleged violations of this article; and the right to inform any person of his or her potential rights under this section.

C. It shall be unlawful for an employer's absence control policy to count paid sick time taken under this article as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

D. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this section.

E. There shall be a rebuttable presumption of unlawful retaliation under this section whenever an employer takes adverse action against a person within 90 days of when that person:

1. Files a complaint with the Department or a court alleging a violation of any provision of this article;

2. Informs any person about an employer's alleged violation of this article;
3. Cooperates with the Department or other persons in the investigation or prosecution of any alleged violation of this article;
4. Opposes any policy, practice, or act that is unlawful under this article; or
5. Informs any person of his or her rights under this article.

§ 13-16-12 NOTICE, POSTING AND RECORDS.

A. Employers shall give notice to employees of their rights under this article. Under this section, employers are required to inform employees that employees are entitled to predictability pay, retention pay, and paid sick time; the amount of paid sick time; and the terms of its use guaranteed under this article, that retaliation against employees who exercise their rights under this article is prohibited and that each employee has the right to file a complaint or bring a civil action if rights guaranteed by this article are denied by the employer or the employee is retaliated against for exercising their rights under this article.

B. Employers may comply with this section by supplying each of their employees with a notice that contains the information required in subsection (a) in English and in any language that is the language that the employer uses to communicate with that employee.

C. Every employer shall post in a conspicuous place at any workplace or job site where any employee works a notice published by the City Attorney informing employees of the current retention pay and of their rights under this article. Every employer shall post such notices in English and Spanish in a conspicuous and accessible place in each establishment where such employees are employed.

D. Any pay required by this article must be recorded in an attachment to the employee's regular paycheck. Every employer shall indicate in the written receipt required by NMSA §§ 50-4-2 the amount of predictability pay, if any. The Department may require additional means of notification or inclusion of additional information to employees if necessary to effectuate this section.

E. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

F. Employers shall maintain records showing the hours worked daily by all employees, paid sick time accrued and paid sick time taken by all employees, the wages and predictability pay paid to all employees, and the initial work schedule and all subsequent revisions to the work schedule of all employees. Employers shall retain payroll records pertaining to employees for a

period of three years, and such records shall be available upon request by the department. An employee shall be permitted to inspect records pertaining to his or her employment at a reasonable time and place. Failure to maintain records required under this article shall give rise to a rebuttable presumption that the employer has violated this article, and the employee's reasonable estimate regarding the initial work schedule and subsequent revisions to the schedule, hours worked, wages and predictability pay paid, and sick leave accrued and taken may be relied upon.

G. An employer who fails to keep true and accurate records, furnish a record in a timely fashion, or who falsifies records required under this section, shall have violated this section and be punished by civil penalties as provided in section 13-16-13. Each day there is a failure to keep a record or to furnish a record or other information required for the proper enforcement of this section shall constitute a separate violation under this section.

§ 13-16-13 ENFORCEMENT.

A. Rulemaking. The city shall have the authority to coordinate implementation and enforcement of this article and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the city shall have the force and effect of law and may be relied on by employers, employees, and other parties to determine their rights and responsibilities under this article. Any such guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this article, including supplementary procedures for helping to inform employees of their rights under this article and for monitoring employer compliance with this article.

B. Civil enforcement. The Department, the City Attorney or any person aggrieved by a violation of this article, or any entity a member of which is aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against an employer violating this article. Such action may be brought by a person aggrieved by a violation of this article without first filing an administrative complaint.

1. Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement in employment, back pay and injunctive relief. Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid sick time plus any actual damages suffered as the result of the employer's violation of this section plus an equal amount of liquidated damages of twice the unpaid sick time

owed. Any employee receiving less than the wage or predictability pay to which the employee is entitled under this article upon prevailing in an action under this section, shall recover the balance of the wages or predictability pay owed, including interest thereon, and an additional amount equal to twice the wages or predictability pay owed, and any other appropriate legal or equitable relief. Any employee not provided a rest break or meal period shall recover one hour of pay at the employee's regular rate of pay, in addition to wages owed, for each shift that the rest break or meal period was not provided. In an action brought by the City Attorney, any unpaid wages and actual damages recovered shall be payable to the individual employee to whom the violation occurred.

2. Any employee who has suffered discrimination in any manner or had adverse action taken against that employee in retaliation for exercising rights protected under this article may bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover actual damages plus reinstatement in the case of discharge. In any case where an employee has been discharged in retaliation for exercising rights under this article, the period of violation extends from the day of discharge until the day the employee is reinstated, the day the employee agrees to waive reinstatement or, in the case of an employee who may not be rehired, from the day of discharge until the day legal judgment is final.

3. Aggrieved persons prevailing in an action to enforce this article shall be entitled to recover his or her costs and expenses of suit and reasonable attorney's fees.

4. The statute of limitations for a civil action brought pursuant to this section shall be for a period of four years from the date the alleged violation occurred, except that civil actions brought to recover overtime pay owed under this section must be brought within one year from the date the alleged violation occurred.

5. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of New Mexico.

C. Administrative Enforcement. The department is authorized to take appropriate steps to enforce this section.

1. Any person alleging a violation of this article shall have the right to file a complaint with the department within one year of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such

complainant that the department will be disclosing his or her identity prior to such disclosure.

2. Any employee or former employee may contact the department and report an allegation of non-compliance with this article by an employer. Upon receipt of a claim from an Employee, the department shall send a demand letter to the employer notifying the employer that the department is in receipt of a complaint of non-compliance with this article. The department shall demand written confirmation of compliance or corrective action within ten days from the date of the letter. The letter shall inform the employer that failure to comply may result in criminal charges, a civil action seeking damages, attorneys' fees and other legal remedies where applicable. The letter shall also inform the employer that retaliation against an employee for claiming rights under this article is a basis for a private right of action seeking additional monetary damages to be determined by a court.

3. If the employer disputes the claim, the employer shall forthwith provide written documentation showing compliance with this article. Failure of the employer to provide timely proof of compliance is itself a basis for further action. If the department believes that a violation has occurred, it shall issue to the offending person a notice of violation.

4. The department shall have the power to impose penalties payable to the city for violations of this article and to grant an employee or former employee all appropriate relief. Any entity or person found to be in violation of this article shall be liable for a civil penalty not to exceed five hundred dollars for each act in violation.

5. When an employer fails or refuses to comply with the department's order, the department may file with the district court a petition requesting the court to order the employer to comply with the order, thereupon the court shall issue an order to show cause directed to the employer why an order directing compliance should not be issued. Notwithstanding the provisions of any law or rule of civil procedure to the contrary, the court shall examine at the hearing on the order to show cause all the evidence in the record and may amend the order in any way the court deems just and equitable. If the city ordered an award of damages and if the court sustains any or all of the award, it shall enter judgment on that order in the same manner as in any civil suit.

6. The city shall annually report on its website the number and nature of the complaints received pursuant to this article, the results of investigations undertaken pursuant to this article, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this article, and the average time for a complaint to be resolved pursuant to this article.

§ 13-16-14 RELATIONSHIP TO OTHER REQUIREMENTS.

A. This article provides for minimum standards for work hours and sick time and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy, or standard that provides for more generous compensation, rights, benefits, or protections. Nothing contained in this article prohibits an employer from establishing more generous policies than those established under this article.

B. Nothing in this article shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this article be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.

C. Nothing in this article shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time to an employee than required herein.

D. Employers subject to this article may by collective bargaining agreement provide that this article shall not apply to employees covered by that collective bargaining agreement.”

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word, or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

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

SECTION 4. EFFECTIVE DATE. This Ordinance takes effect 90 days following the date of enactment provided that in the case of employees covered by a collective bargaining agreement, this Act shall apply on the date of the termination of such agreement.

