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Sponsors: Isaac Benton
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Date	Ver.	Action By	Action	Result
6/29/2020	1	City Council	Substituted	Fail
6/29/2020	1	City Council	Withdrawn	Pass
6/15/2020	1	President	To be heard at the Council Meeting	
6/15/2020	1	City Council	Introduced	

CITY of ALBUQUERQUE TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. O-20-26 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton & Lan Sena

ORDINANCE

Adopting A Paid Sick Leave Ordinance; Requiring Temporary Public Health Emergency Sick Leave (Benton, Sena)

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

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

WHEREAS, the City of Albuquerque faces the continuing threat of damage to public health

thereby perpetuating an uncertain financial burden; and

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

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

WHEREAS, effective April 1, 2020, the federal Families First Coronavirus Response Act (“FFCRA”) requires employers of fewer than 500 employees to provide emergency paid sick leave benefits to employees who may not be able to work because of COVID-19; and

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

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

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

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

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

WHEREAS, one in six employees in the U.S. 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 health care, service, restaurant and retail workers, are unlikely to have the right to earn 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 recover and escape from such situations, and that lost income is particularly devastating for such victims, who need economic security to ensure safety; and

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

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

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

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

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

WHEREAS, providing for liquidated damages and penalties when employers violate this Ordinance will compensate workers for violations and incentivize voluntary employer compliance, thereby reducing the enforcement costs to the City; and

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

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

SECTION 1. A new Article 19, the “Paid Sick Leave Ordinance,” is hereby added and adopted within

Chapter 13, "Business and Occupations," as follows:

"[§ 13-19-1 TITLE AND DECLARATION OF ALBUQUERQUE PUBLIC POLICY. This article may be cited as the "Albuquerque Paid Sick Leave Ordinance." It is declared to be the policy of the Albuquerque Paid Sick Leave Ordinance (1) to ensure that all workers in the City of Albuquerque can address their own health needs and those of their family members during a public health emergency, by requiring employers to provide a minimum level of paid sick time, including time to care for their family members; (2) to ensure that workers and their families can follow the orders and recommendations of public health officials or health care providers during an emergency that threatens their health and the health of others in the community; (3) to protect the public's health by reducing the risk of contagion during a public health emergency; (4) to promote the economic security and stability of workers in the City of Albuquerque and their families during a public health emergency; (5) to protect workers in the City of Albuquerque from losing their jobs or facing workplace discipline when they use paid sick time during a public health emergency to care for themselves or their families; (6) to establish minimum requirements for paid sick leave at levels consistent with the general health, safety and welfare of the people of the City of Albuquerque; and (7) to safeguard existing paid time off standards against unfair competition by those who do not provide workers an amount of paid sick leave adequate to maintain the general health, safety and welfare of the people of the City of Albuquerque; and (8) to accomplish these purposes in a manner that is feasible for employers.

§ 13-19-2 DEFINITIONS.

CITY. The City of Albuquerque.

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

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

EMPLOYER. (1) Any person, including any individual, estate, business trust, association, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, legal representative or other entity or group of persons or entities who is required to apply for a business registration from the City of Albuquerque as required by the Business Registration Ordinance at Chapter 13, Article 1 of the Albuquerque Code of Ordinances, including their corporate officers or executives; (2) any non-profit corporation with a physical premises within the City of Albuquerque; or (3) any person employing an individual who works within the municipal limits of the City in the home

of another person for the purpose of caring for a child, doing housekeeping or providing other services related to the care of persons in private homes or the maintenance of private homes or their premises. EMPLOYER shall include the City of Albuquerque.

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

PAID SICK TIME. Time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the worker normally earns during hours worked and is provided by an employer to a worker for the purposes described in section 13-19-3(A) 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.

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

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

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

§ 13-19-3 PAID SICK LEAVE.

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

1. A worker's mental or physical illness, injury or health condition; medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or preventive medical care;
2. A worker to care for a family member with a mental or physical illness, injury or health condition; to care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; to care for a family member who needs preventive medical care; or to care for a family member who is self-isolating due to being diagnosed with or experiencing symptoms of a communicable illness related to a public health emergency;
3. Closure of the worker's place of business or family member's school or place of care for public health reasons;

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

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

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

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

B. PUBLIC HEALTH EMERGENCY PAID SICK LEAVE.

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

a. For full-time workers, 80 hours.

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

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

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

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

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

C. EARNED PAID SICK LEAVE

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

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

3. Request for paid sick time. An employer shall provide paid sick time upon the request of a worker or an individual acting on the worker's behalf. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence. When the use of paid sick time is foreseeable, such as a scheduled medical appointment or similar matters, the worker shall make a good faith effort to provide notice to the employer in advance of the use of the paid sick time and shall make a reasonable effort to schedule the use of paid sick time in a manner that does not unduly disrupt the operations of the employer.

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

5. Documentation of paid sick time. An employer may require reasonable documentation that paid sick time has been used for a covered purpose if the worker uses three or more consecutive paid sick days. Documentation signed by a health care professional indicating that paid sick time is necessary shall be considered reasonable. If an employer chooses to require documentation from a health care professional, the employer is responsible for reimbursing out-of-pocket medical expenses that the worker incurs in obtaining the documentation, if the medical visit is not medically necessary and made solely to obtain documentation for the employer, and if such costs are not covered by the worker's or family member's insurance plan. In cases of domestic abuse, sexual assault or stalking, reasonable documentation may include a police report, a court-issued document, or a signed statement from a victim services organization, clergy member, attorney, advocate, or other person affirming that the paid sick time was taken for one of the purposes of Subsection 13-19-3(A)(7). An employer may not require that the documentation explain the nature of any medical condition or the details of the domestic abuse, sexual assault or stalking.

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

§ 13-19-4 NO IMPACT ON MORE GENEROUS SICK TIME OR PAID TIME OFF POLICIES; NO SEPARATE TRACKING; NO ADDITIONAL SICK TIME REQUIRED. This Ordinance creates a floor, not a ceiling. Nothing in this Ordinance prohibits an employer from providing more generous policies than the minimum established under this Ordinance, and this Ordinance shall not be interpreted in a way that makes it in any way more difficult for employers to offer benefits that exceed the requirements of this Ordinance. Any employer with a paid time off policy that makes available an amount of paid time off sufficient to meet or exceed this Ordinance's accrual and use requirements, and that may be used for the same purposes and under the same conditions as paid sick time under this Ordinance, is not required to provide additional or separate paid sick time, nor to track sick time separately from paid time off, nor to in any way reduce the benefits provided to workers. If a worker covered by a paid time off policy uses all available paid time off for reasons unrelated to sick time, the employer is not required to provide the worker additional sick time.

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

A. Because it is the public policy of the City of Albuquerque that workers be permitted to exercise rights granted under this Ordinance, no employer nor other person shall take or threaten any adverse action whatsoever against a worker that is reasonably likely to deter such worker from exercising or

attempting to exercise any right granted under this Ordinance or because the worker has exercised or attempted to exercise rights protected under this Ordinance, has in good faith alleged violations of this Ordinance or has raised any concern about workplace health and safety practices or hazards related to COVID-19 to the employer, the employer's agent, other workers, a government agency, or to the public such as through print, online, social or any other media.

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

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

§ 13-19-6 NOTICE AND RECORDS. On or before the effective date of this Ordinance, the Department shall make available on its website a summary notice to workers in English and Spanish of each provision of this Ordinance. Employers shall provide this notice to each worker on the first day of work, and shall post it in a conspicuous place in each establishment where workers are employed in Albuquerque, provided, however, that in cases where the employer does not maintain a physical workplace, or a worker teleworks or performs work through a web-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based platform. If an employer's business is closed due to a public health emergency, these notice and posting requirements shall be waived for the period in which the place of business is closed. Employers shall accurately track and record the amount of paid sick time available to, accrued by or used by each worker for each pay period in any format the employer chooses, keep such records for the time period required for employment and payroll records set forth in 11.3.400.401(F) NMAC, and make such records available to the Department upon request. Upon a worker's request, an employer shall inform a worker of the amount of paid sick time available to, accrued by and used by the worker. An employer's failure to maintain records of the amount of paid sick time available to, accrued by or used by each worker is a violation of this Ordinance. In the absence of records, the fact finder may rely on accurate and contemporaneously maintained records of the worker's work time to determine the amount of sick time accrued and used, or, if no accurate records are available, on the worker's reasonable estimates of hours worked. Employers who offer paid time off policies may comply with

the above provisions by tracking and recording the equivalent amount of paid time off provided and used. Employers may, but are not required to, track or provide paid sick time separately from other forms of paid time off.

§ 13-19-7 ENFORCEMENT.

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

B. Civil enforcement. The Department or any person or any entity a member of which is aggrieved by a violation of this Ordinance may bring a civil action in a court of competent jurisdiction against an employer violating any provision of this Ordinance within four years from the date the alleged violation occurred. Such action may be brought without first seeking the administrative remedies described in (A), above. Upon prevailing, the plaintiff shall recover all appropriate legal or equitable relief, including an injunction to order compliance with the requirements of this Act and to restrain continued violations; liquidated damages calculated at three times the value of the paid sick time accrued; the costs and expenses of suit; and reasonable attorney's fees. In the case of retaliation or adverse action, the plaintiff shall also recover actual damages, including but not limited to back pay, and shall have a right to reinstatement, rescission of discipline or other appropriate relief. A plaintiff may establish a prima facie case of retaliation by way of proof that the employer took adverse action within 90 days after the worker exercised rights protected under this Ordinance. In an action brought by the Department, any damages recovered shall be payable to the individual workers who experienced the violation.

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

§ 13-19-8 RELATIONSHIP TO OTHER REQUIREMENTS.

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

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

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

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 is passed as an emergency measure and takes effect immediately upon publication by title and general summary.

