

City Provide Paid Leave To Employees (Sena, Davis)

WHEREAS, mandatory sick leave requirements for private businesses operating within the City has been the subject of ongoing policy and legislative debate within the City since at least 2015 with the introduction of the “fair work week act” (O-15-57); and

WHEREAS, since 2015 the question of mandatory minimum sick leave within the City has been the subject of ballot initiatives, associated legal actions, and additional legislative proposals before the City Council; and

WHEREAS, despite the continuous debate and expenditures of resources by both proponents and opponents of the various sick leave proposals, many workers in the City remain without minimum sick leave support, and employers remain subject to unpredictability as to their future potential sick leave obligations; and

WHEREAS, the question of minimum sick leave in the City impacts the lives of workers, the livelihood and relative success of some businesses, and the health, safety, and welfare of the City more generally; 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, all workers at some time during each year need limited time away from work to take care of their own health needs or those of family members; 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 illness 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 public contact, such as health care service, restaurants and retail workers, are unlikely to have the right to earn paid leave, thereby increasing their risk of passing illness to co-workers and customers; and

WHEREAS, victims of domestic abuse, stalking, harassment and sexual assault lose days of paid employment or lose their jobs because the need time to recover and escape from such situations, and that lost income is particularly devastating for such victims, who need economic

security ensure safety; and

WHEREAS, the right to earn sick time as provided herein will reduce recovery time from illness, enable people to obtain preventive medical care, 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 or the public and enable victims of domestic abuse, sexual assault, harassment and stalking to get away from the 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 right to use earned sick time to care for a family member must reflect the diversity of family caregiving relationships today; 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 CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. A new Article 19, the “Healthy Families and Workplaces,” is hereby added and adopted within Chapter 13 “Business and Occupations,” as follows:

“[§ 13-19-1. SHORT TITLE. The short title of this article is the "Healthy Families and Workplaces ordinance”

13-19-2. DEFINITIONS. As used in this part, unless the context otherwise requires:

CITY: The City of Albuquerque.

EARNED PAID TIME OFF: 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 this ordinance.

EMPLOYEE: Any person an employer, as defined in this ordinance, suffers or permits to perform work for monetary compensation for at least fifty-six (56) hours in a year. 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 1978, §§ 50-4-21(c)(2), (3), and (6) of the New Mexico Minimum Wage Act, except that persons employed by the City and salespersons or employees compensated upon piecework, flat rate schedules or commission basis are employees. Employee shall not include interns working 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 commission pursuant to NMSA 1978 § 50-4-21(C)(1). Employee shall not include independent contractors or per diem employees. Employee shall not include any person employed by a parent, spouse, sibling, aunt, uncle, or cousin.

EMPLOYER: Any person, estate, business trust, association, receiver, cooperative association, club, corporation, non-profit corporation, company, firm, partnership, joint venture, syndicate, legal representative, or other entity or group of persons or entities that is required to apply for a business registration from the City, such entities' corporate officers or executives, with a physical premises within the incorporated limits of the City, which employs three or more employees within the incorporated limits of the City. Employer shall include the City.

SEPARATION FROM EMPLOYMENT: The end of an employment relationship for any reason including termination, retirement, lay-off, or resignation.

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

§ 13-19-3. EMPLOYER REQUIREMENT TO PROVIDE PAID TIME OFF TO EMPLOYEES; USE OF PAID TIME OFF; EMPLOYER COMPLIANCE.

(A) ACCRUAL OF PAID TIME OFF

(1) Each employer shall provide paid time off to each employee, accruing at a minimum of one (1) hour of earned paid time off for every thirty-two (32) hours worked, provided that employers may choose a higher accrual rate or to provide for accrual of all earned paid time off at the beginning of the year.

(2) The requirement to provide paid time off becomes effective for employers over two years, dependent on their number of employees:

(A) Each employer with ten (10) or more employees shall come into conformance with the requirements of this ordinance by no later than January 1, 2021; and

(B) Each employer with three (3) or more employees shall also come into conformance with the requirements of this ordinance by no later than January 1, 2022.

(3) Employees cannot accrue or use more than 56 hours of earned paid time off in a year, unless the employer's policy provides for a higher limit on use or accrual.

(4) Earned paid time off shall begin to accrue on the employee's date of employment, or on the effective date of this ordinance for existing employees.

(5) An employer may loan earned paid time off to an employee in advance of accrual or eligibility by such employee.

(6) Employees 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 earned paid time off accrual unless the employer selects a higher limit.

(7) CARRY-OVER OF EARNED PAID TIME OFF. Unused accrued earned paid time off is carried over to the following year, but employees cannot carry over more than the total annual accrual limit, unless the employer's policy provides otherwise.

(8) If an employee is transferred but remains employed by the same employer, if a successor employer replaces the original employer, or if a former employee is rehired by the same employer within 6 months of their separation from employment, the employer shall reinstate all previously accrued and unused earned paid time off to the employee, up to a maximum of fifty-six (56) hours unless the employer chooses to provide more, or unless the employer previously chose to pay out the earned paid time off upon transfer or separation from employment.

(9) The Albuquerque City Council will review a report of paid time off every year after the effective date of the ordinance in order to assess its adequacy.

(B) PERMITTED USES AND PROCEDURES FOR PAID TIME OFF

(1) An employer shall permit an employee to use the earned paid time off accrued for any reason.

(2) An employee is not entitled to use accrued earned paid time off until the employee has worked 56 hours for the employer.

(3) MAXIMUM 90-DAY DELAY IN BENEFIT.

(i) Employees can begin using accrued earned paid time off beginning no earlier than the 90th calendar day following the effective date of this ordinance, unless the employer's policy provides that employees may use accrued time earlier, subject to Section 13-19-7(C).

(5) REQUEST FOR EARNED PAID TIME OFF.

(i) An employer shall provide earned paid time off upon the request of an employee or a family member, caretaker, or medical professional acting on the employee's behalf. At the time of

employment, or the effective date of this law, the employer shall instruct the employee on the manner in which such requests shall be made, whether it 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.

(ii) When the use of earned paid time off is foreseeable, such as a scheduled medical appointment or similar matters, the employee shall provide notice to the employer as soon as practicable and when possible, shall schedule the use of earned paid time off for such purposes in a manner that does not unduly disrupt the operations of the employer. At the time of employment, or the effective date of this law, the employer shall instruct the employee on the manner in which such notice shall be given, whether it may be made orally, in writing, by electronic means, or by any other means acceptable to the employer. Advance notice cannot be required for paid leave taken under this ordinance due to an emergency, unexpected illness, or if the employee or employee's family member is the victim of domestic abuse, sexual assault, or stalking.

(6) An employer shall neither require an employee to find a replacement worker as a condition of using earned paid time off nor count the use of earned paid time off in a way that will lead to discipline, discharge, demotion, non-promotion, suspension or any other adverse action.

(7) An employer shall not take or threaten any adverse action whatsoever against an employee because the employee has exercised or attempted to exercise rights protected under this ordinance or has alleged violations of this ordinance in good faith.

(8) CONFIDENTIALITY. All information an employer obtains related to an employee's reasons for taking earned paid time off is confidential and may not be disclosed except with the permission of the employee or as necessary for validation purposes for insurance disability claims, accommodations consistent with the Americans with Disabilities Act, as required by this ordinance, or by court order.

(C) RECORD KEEPING

(1) Employers shall accurately track and record the amount of earned paid time off accrued or used by each employee for each pay period in any format the employer chooses for the time period required for employment and payroll records set forth in Rule 1.3.400.40(f) NMAC.

(2) Upon an employee's request, an employer shall inform the employee of the amount of earned paid time off accrued and used by the employee.

(3) An employer's failure to maintain records of the amount of earned paid time off accrued or

used by each employee is a violation of this ordinance.

(4) In the absence of records, a fact finder may rely on accurate and contemporaneously maintained records of the employee's work time to determine the amount of paid time off accrued and used, or, if no accurate records are available, on the employee's reasonable estimates of hours worked.

§ 13-19-4. ENFORCEMENT OF PAID TIME OFF PROVISIONS.

(A)ADMINISTRATIVE INVESTIGATION AND ENFORCEMENT.

(1) Any covered employee or their representative may file an administrative complaint with the City charging that an employer has violated this ordinance as to that employee within one calendar year of the date that an alleged violation(s) occurred or within one year after the date on which the employee receives evidence from the New Mexico Taxation and Revenue Department, New Mexico Department of Workforce Solutions, Internal Revenue Service, or Department of Labor that the employee was incorrectly classified as an independent contractor.

(2) When the City receives a complaint, the City shall notify the complainant's employer and shall provide information about the requirements of the process for investigating and adjudicating the complaint.

(3) The City shall establish and maintain a timely process for investigating and adjudicating complaints that is fair to employees and employers. The City shall publish information about the process on its website and resolve to educate employers and employees about the requirements of this ordinance and the process for filing and resolving complaints.

(4) The City may review records regarding all employees at the employer' s worksite to protect the identity of any employee identified in the complaint and to determine whether any violations have occurred.

(5) The name of any employee identified in a complaint to the City will be kept confidential as long as possible. Where the City determines that an employee's name must be disclosed in order to investigate a complaint further, or to comply with law, it may do so only after notifying the employee.

(6) When the City identifies a violation, it may attempt to reach an administrative resolution for payment of damages and penalties as set forth herein prior to bringing an enforcement action in court.

(7) The City shall make guidelines or rules necessary to administer and enforce this Article. 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 ordinance.

(8) The City may suspend a business's City business registration if the business fails to comply with a notice of inspection within forty-five (45) calendar days. The City shall reinstate the suspended license upon compliance with the notice of inspection.

(9) When a complaint filed with the City is closed by the City, or when ninety (90) days have passed from the filing of such complaint and the City has not yet filed a civil action, whichever is earlier, the city shall so notify the complainant. The notification shall include authorization to the complainant to bring a civil action under section 13-19-4(B).

(B) CIVIL ENFORCEMENT

(1) Upon exhaustion of the administrative process, or upon receipt of the authorization to bring a civil action, as outlined in section 13-19-4(A)(9) above, the City, the covered employee, or their representative may bring a civil action in a court of competent jurisdiction against alleging a violation of this ordinance an employer. Exhaustion of the administrative process or receipt of the authorization to bring a civil action by one member of class suing as a representative party satisfies this requirement for all class members.

(2) A prevailing employee will recover all appropriate legal or equitable relief, the costs and expenses of suit, and reasonable attorney's fees; and, in if a court of competent jurisdiction determines that retaliation or an adverse action occurred, the plaintiff will also recover actual damages, including but not limited to back pay at the rate of time and a half, and shall have a right to reinstatement, rescission of discipline, punitive damages, or other appropriate relief.

(3) In an action brought by the City, any actual damages recovered shall be payable to the individual employees who experienced the violation.

(C) PENALTIES.

(1) In addition to the civil remedies, any employer found to be in violation of this ordinance is also liable for a civil penalty payable to the City of fifty dollars per forty (40) hours of incorrectly withheld paid leave for each separate violation, not to exceed a maximum of five hundred dollars (\$500) for each offense.

(2) Each section of this ordinance and each affected employee for whom a violation of that section is identified is counted separately for purposes of identifying a separate violation. All separate violations found to have occurred for up to one calendar year before the filing of a complaint in the course of a single investigation by the City are considered an offense.

(3) Any employer found to be in violation of section 13-19-3(C) or 13-19-5 of this ordinance is liable for a civil penalty payable to the City of one hundred dollars (\$100) for each separate violation, not to exceed a maximum of five hundred dollars (\$500) for each offense.

§ 13-19-5. NOTICE TO EMPLOYEES OF PAID TIME OFF REQUIREMENTS. REGULATIONS.

(A) Each employer subject to the provisions of section 13-19-3 shall, at the time of employment, provide notice to each employee:

(1) Of the entitlement to accrue paid time off for employees, the amount of paid time off provided to employees and the terms under which earned paid time off may be used;

(2) How an employee may request or notify the an employer of the use of paid time off, whether orally, in writing, electronically, or otherwise and to whom;

(3) That retaliation by the employer against the employee for requesting or using paid time off for which the employee is eligible is prohibited; and

(4) That the employee has a right to file a complaint with the City for any violation of this ordinance.

(B) Employers may comply with the provisions of this section by displaying a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by this section in both English and Spanish and any other language spoken by at least five (5) percent of the employer's employees.

(C) The City may adopt regulations to establish additional requirements concerning the means by which employers shall provide such notice.

(D) On or before the effective date of this ordinance, the City shall make available on its website a summary notice to employees in English and Spanish of each provision of this ordinance.

§ 13-19-6. RELATIONSHIP TO OTHER REQUIREMENTS.

(A) This ordinance 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, collective bargaining agreement , regulation, requirement, or policy, including a collective bargaining agreement's grievance process, eligibility requirements, or accrual processes providing equal or more generous earned paid time off.

(B) This ordinance shall not be construed to diminish or impair the rights or obligations of an employee or employer under any valid contract, collective bargaining agreement, employment benefit plan or other agreement providing equal or more generous earned paid time off to an employee than required herein.

§ 13-19-7. NO IMPACT ON MORE GENEROUS PAID TIME OFF POLICIES; NO SEPARATE TRACKING; NO ADDITIONAL PAID TIME OFF REQUIRED.

(A) 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.

(B) 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, is neither required to provide additional or separate earned paid time off, nor to track paid time off separately, nor to in any way reduce the benefits provided to employees.

(C) Employers with probationary employment periods, as they relate to sick leave policies or vacation leave policies, so long as the policies are equivalent or greater in leave provided, may allow for greater delay in benefits than prescribed in sections 13-9-3(B)(2) and (3), provided that the delay is never greater than one hundred twenty (120) calendar days.]”

SECTION 2. SEVERABILITY CLAUSE. If any provision of this article or application thereof to any person or circumstance is judged invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared severable.

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 January 1, 2021.