



Legislation Text

File #: O-17-1, Version: 1

CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-17-1 ENACTMENT NO. _____

SPONSORED BY: Ken Sanchez & Don Harris

ORDINANCE

Adding A New Article 16 To Chapter 13, ROA 1994 Mandating Employer Paid Sick Leave To Employees Within The City Of Albuquerque; Prescribing Rules And Penalties; Setting An Effective Date (Sanchez, Harris)

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

Section 1. That a new Article 16 is added to Chapter 13, ROA 1994, reading as follows:

“§13-16-1. SHORT TITLE. This article may be cited as the “Albuquerque Sick Leave Ordinance.”

§13-16-2. DEFINITIONS. As used in this article:

CHILD means a biological, adopted or foster child, stepchild, legal ward of an employee, or a child of an employee standing in loco parentis, who is (A) under eighteen years of age; or (B) eighteen years of age or older and incapable of self-care because of a mental or physical disability;

DAY OR TEMPORARY WORKER means an individual who performs work for another on (A) a per diem basis, or (B) an occasional or irregular basis for only the time required to complete such work, whether such individual is paid by the person for whom such work is performed or by an employment agency or temporary help service;

DOMESTIC ABUSE has the same meaning as provided in the state Family Violence Protection Act, §40-13-1 et. seq NMSA 1978;

EMPLOYEE means any person who performs work for an employer for monetary

compensation for an average of at least twenty (20) hours a given week in a given calendar quarter within the municipal limits of the city. Employee does not include day or temporary workers, independent contractors, interns, apprentices, or work-study recipients;

EMPLOYER means any person, firm, business, educational institution, corporation, limited liability company or other entity that is required to have a business license or business registration from the City of Albuquerque and that employed fifty (50) or more Employees within the municipal limits of the city in any one calendar quarter in the previous year;

NEGATIVE PERSONNEL ACTION means any termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, or disciplinary action taken by an employer against an employee;

SEXUAL ASSAULT means any act that constitutes a violation of §30-9-11 NMSA 1978; and

SPOUSE means a husband or wife, as the case may be.

§13-16-3. EMPLOYER REQUIREMENT TO PROVIDE SICK LEAVE TO EMPLOYEES. USE OF LEAVE. EMPLOYER COMPLIANCE. RATE OF PAY DURING LEAVE.

(A) Each employer shall provide paid sick leave annually to each of such employer's employees in the city of Albuquerque. Such paid sick leave shall accrue:

(1) beginning January 1, 2019, or for an employee hired after said date, beginning on the employee's date of employment;

(2) at a rate of one hour of paid sick leave for each forty (40) hours worked by an employee; and

(3) in one-hour increments up to a maximum of forty (40) hours per calendar year.

Each employee shall be entitled to carry over up to forty (40) unused accrued hours of paid sick leave from the current calendar year to the following calendar year, but no employee shall be entitled to use more than the maximum number of accrued hours, as described in subdivision (3) of this subsection, in any year unless the employer agrees.

(B) An employee shall be entitled to the use of accrued paid sick leave upon the completion of the employee's seven hundred and twentieth (720) hour of employment, if the employee was hired prior to January 1, 2019, or if hired after January 1, 2019, upon the completion of the employee's seven hundred and twentieth (720) hour of employment from the date of hire, unless the employer agrees to an earlier date. An employee shall not be entitled to the use of accrued paid sick leave if such employee did not work an average of twenty (20) or more hours a week for the employer in the most recent complete calendar quarter.

(C) An employer shall be deemed to be in compliance with this article if the employer offers any other paid leave, or combination of other paid leave that (1) may be used for the purposes of § 13-16-4, and (2) is accrued in total at a rate equal to or greater than the rate described in subsections (A) and (B) of this section. For the purposes of this subsection, "other paid leave" may include, but not be limited to, paid vacation, personal days or paid time off.

(D) Each employer shall pay each employee for paid sick leave at a pay rate equal to the normal hourly wage for that employee. For any employee whose hourly wage varies depending on the work performed by the employee, the "normal hourly wage" shall mean the average hourly wage of the employee in the pay period prior to the one in which the employee used paid sick leave.

(E) Notwithstanding the provisions of this section and §13-16-4 to §13-16-7, inclusive, and upon the mutual consent of the employee and employer, an employee who chooses to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed, shall not use accrued paid sick leave up to the amount of additional hours worked.

§13-16-4. PERMITTED USES FOR SICK LEAVE.

(A) An employer shall permit an employee to use the paid sick leave accrued pursuant to § 13-16-3:

(1) For

- (a) an employee's illness, injury or health condition,
- (b) the medical diagnosis, care or treatment of an employee's mental illness or physical illness, injury or health condition, or
- (c) preventative medical care for an employee.

(2) For

- (a) an employee's child's or spouse's illness, injury or health condition,
- (b) the medical diagnosis, care or treatment of an employee's child's or spouse's mental or physical illness, injury or health condition, or
- (c) preventative medical care for a child or spouse of an employee.

(3) Where an employee is a victim of family violence or sexual assault

- (a) for medical care or psychological or other counseling for physical or psychological injury or disability,
- (b) to obtain services from a victim services organization,
- (c) to relocate due to such family violence or sexual assault, or

(d) to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

(B) If an employee's need to use paid sick leave is foreseeable, an employer may require advance notice, not to exceed seven days prior to the date such leave is to begin, of the intention to use such leave. If an employee's need for such leave is not foreseeable, an employer may require an employee to give notice of such intention as soon as practicable. For paid sick leave of three or more consecutive days, an employer may require reasonable documentation that such leave is being taken for the purpose permitted under subsection (A) of this section. If such leave is permitted under subdivision (1) or (2) of subsection (A) of this section, documentation signed by a health care provider who is treating the employee or the employee's child or spouse indicating the need for the number of days of such leave shall be considered reasonable documentation. If such leave is permitted under subdivision (3) of subsection (A) of this section, a court record or documentation signed by an employee or volunteer working for a victim services organization, an attorney, a police officer or other counselor involved with the employee shall be considered reasonable documentation.

(C) Nothing in §13-16-3 to §13-16-7, inclusive, shall be deemed to require any employer to provide paid sick leave for an employee's leave for any purpose other than those described in this section.

(D) Unless an employee policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination, no employee shall be entitled to payment of unused accrued sick leave under this section upon termination of employment.

(E) Nothing in §13-16-3 to §13-16-7, inclusive, shall be construed to prohibit an employer from taking disciplinary action against an employee who uses paid sick leave provided under §13-16-3 to §13-16-7, inclusive, for purposes other than those described in this section.

§13-16-5. ADDITIONAL LEAVE. DONATION OF UNUSED LEAVE. BREAKS IN SERVICE.

(A) Nothing in §13-16-3 to §13-16-7, inclusive, shall be construed to

(1) prevent employers from providing more paid sick leave than is required under §13-16-3 to §13-16-7, inclusive,

(2) diminish any rights provided to any employee under a collective bargaining agreement, or

(3) preempt or override the terms of any collective bargaining agreement effective prior to January 1, 2019.

(B) Nothing in §13-16-3 to §13-16-7, inclusive, shall be construed to prohibit an employer

(1) from establishing a policy whereby an employee may donate unused accrued paid sick leave to another employee, and

(2) who provides more paid sick leave than is required under §13-16-3 to §13-16-7, inclusive, for the purposes described in subdivision (1) of subsection (A) of §13-16-4 from limiting the amount of such leave an employee may use for other purposes.

(C) Any termination of an employee's employment by an employer, whether voluntary or involuntary, shall be construed as a break in service. Should any employee subsequently be rehired by the employer following a break in service, the employee shall

(1) begin to accrue sick leave in accordance with §13-16-3, and

(2) shall not be entitled to any unused hours of paid sick leave that had been accrued prior to the employee's break in service unless agreed to by the employer.

§13-16-6. NEGATIVE PERSONNEL ACTION PROHIBITED. FILING OF COMPLAINT WITH THE CITY OFFICE OF DIVERSITY AND HUMAN RIGHTS. HEARING. PENALTIES.

(A) No employer shall take negative personnel action or discriminate against an employee because the employee:

(1) requests or uses paid sick leave either in accordance with §13-16-3 and §13-16-4 or in accordance with the employer's own paid sick leave policy, as the case may be, or

(2) files a complaint with the Office of Diversity and Human Rights (the "Office") alleging the employer's violation of §13-16-3 to §13-16-7, inclusive.

(B) The Office shall advise any employee who:

(1) is covered by a collective bargaining agreement that provides for paid sick days, and

(2) files a complaint pursuant to subsection (A) of this section of his or her right to pursue a grievance with his or her collective bargaining agent.

(C) Any employee aggrieved by a violation of the provisions of §13-16-3 to §13-16-7, inclusive, may file a complaint with the Office. Upon receipt of any such complaint, the Office may submit a request for hearing to the City's Independent Office of Hearings, or other designated City hearing officer. After the hearing, the hearing officer will prepare a written finding. Any employer who is found by a preponderance of the evidence, to have violated the provisions of subsection (A) of this section shall be liable to the City for a civil penalty of five hundred dollars (\$500) for each violation. Any employer who is found by a preponderance of the evidence, to have violated the provisions of §13-16-3 to §13-16-5, inclusive, or §13-16-7 shall be liable to the City for a civil penalty of up to one hundred dollars (\$100) for each violation. The City hearing officer may award the employee

all appropriate relief, including the payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subject to such retaliatory personnel action or discriminated against. Any party aggrieved by the decision of the hearing officer may appeal the decision to any court of competent jurisdiction within 30 days after the hearing officer's written finding.

(D) The Office shall administer this section within available appropriations.

§13-16-7. NOTICE TO EMPLOYEE'S OF SICK LEAVE REQUIREMENTS. REGULATIONS. Each employer subject to the provisions of §13-16-3 shall, at the time of hiring, provide notice to each employee:

(1) of the entitlement to sick leave for employees, the amount of sick leave provided to employees and the terms under which sick leave may be used,

(2) that retaliation by the employer against the employee for requesting or using sick leave for which the employee is eligible is prohibited, and

(3) that the employee has a right to file a complaint with the Office for any violation of this section and of §13-16-3 to §13-16-6, inclusive. 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. The Office may adopt regulations, in accordance with Chapter 2, Article 15, to establish additional requirements concerning the means by which employers shall provide such notice. The Office shall administer this section within available appropriations.”

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 provisions being declared unconstitutional or otherwise invalid.

Section 3. COMPILATION. The amendments set forth in Sections 1 above shall amend, be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

Section 4. EFFECTIVE DATE. This ordinance shall take effect January 1, 2019.

x:\city council\share\cl-staff_legislative staff\legislation\sick leave ordinance - sanchez harris.docx