



Legislation Text

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CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-18-46 ENACTMENT NO. _____

SPONSORED BY: Patrick Davis

ORDINANCE

Adding A New Article 17 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 (Davis)

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**

- **48% of businesses that do have paid leave experience lower turnover**
- **employees strongly favor an ordinance guaranteeing the right to earn sick time, including those currently with and without paid leave, working full and part-time, and employed in all industries and by businesses of all sizes; and**

WHEREAS, workers in jobs with high public contact, such as health care, service, restaurant and retail employees, are unlikely to have the right to earn sick time, thereby increasing their risk of passing illnesses to co-workers and customers; 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, the public health benefits of the right to earn sick time will be increased by covering both registered Albuquerque businesses and non-profit corporations, like health care providers, whose employees care for elderly, pregnant, 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, 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 use earned sick time to care for a family member must reflect the diversity of family caregiving relationships today; 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, in their October 6th, 2017 editorial “Now it’s time to craft a better ABQ sick leave law” the Albuquerque Journal Editorial board points out “Virtually half of 91,000 Albuquerqueans voted for the sick leave plan. Two Journal polls showed strong support

for sick leave. And again, almost to a person, opponents have said they would support some type of paid sick leave ordinance.”; and

WHEREAS, the Albuquerque Hispano Chamber of Commerce has publicly supported engagement of the people of Albuquerque to create a paid sick leave ordinance; 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. That a new Article 17 is added to Chapter 13, ROA 1994, reading as follows: “§13-17-1. **SHORT TITLE.** This article may be cited as the “Albuquerque Sick Leave Ordinance.”

§13-17-2. **DEFINITIONS.** As used in this article:

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.

EARNED 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 13-17-3 of this article.

EMPLOYEE. Any person an **EMPLOYER**, as defined in this Ordinance, suffers or permits to perform work for monetary compensation for at least 56 hours in a year within the municipal limits of the City, including on a part-time, seasonal or temporary basis.

EMPLOYER. Any person, 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 that 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, such entities’ corporate officers or executives or any non-profit corporation with a physical premises within the City of Albuquerque. **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 employee or of the employee's spouse or domestic partner, and the spouses or domestic partners of these individuals; a person to whom the employee stands or stood in loco parentis; or any other individual or relative whose close association with the employee or employee's spouse or domestic partner is the equivalent of a family relationship.

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

§13-17-3. EMPLOYER REQUIREMENT TO PROVIDE SICK LEAVE TO EMPLOYEES. USE OF LEAVE. EMPLOYER COMPLIANCE.

(A) Accrual of Sick Time

- (1) Employees shall accrue a minimum of one hour of earned sick time for every 30 hours worked, provided that employers may choose a higher accrual rate or to provide for accrual of all earned sick time at the beginning of the year.**
- (2) Employees shall not accrue or use more than 56 hours of earned sick time in a year, unless the employer's policy provides for a higher limit on use or accrual.**
- (3) Earned sick time shall begin to accrue on the employee's date of hire, or on the effective date of this Ordinance if an employee is already employed on that date.**
- (4) An employer may, but is not obligated to, loan earned sick time to an employee in advance of accrual by such employee.**
- (5) 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 sick time accrual, unless the employer selects a higher limit.**
- (6) Carry-over of earned sick time. Unused accrued earned sick time shall be carried over to the following year, but employees cannot carry over more than 56 hours of earned sick time in a year, unless the employer's policy provides otherwise.**
- (7) If an employee is transferred but remains employed by the same employer, or if a successor employer replaces the original employer, or if an employee separates from employment but is rehired by the same employer within 12 months, the employer shall reinstate all previously accrued and unused earned sick time to the employee, 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 sick time upon transfer or separation.

(B) Permitted Uses and Procedures for Sick Time

(1) An employer shall permit an employee to use the earned sick time accrued for:

- (a) An employee'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; or**
- (b) An employee 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**
- (c) Closure of the employee's place of business or a family member's school or place of care for public health reasons; or**
- (d) Absence necessary due to domestic abuse, sexual assault or stalking suffered by the employee or employee's family member, provided the leave is for the employee to obtain medical or psychological treatment or other counseling, relocate, prepare for or participate in legal proceedings, or obtain services, or to assist the employee's family member with any of the above activities.**
- (e) An employee shall not be entitled to use accrued earned sick time until the employee has worked 56 hours in a year.**

(2) Maximum 90-day delay in benefit.

- (a) Employees shall be entitled to use accrued earned sick time beginning on the 90th calendar day following the date of hire, or the effective date of this law, whichever is later, unless the employer's policy provides that employees may use accrued time earlier.**

(3) Request for earned sick time.

- (a) An employer shall provide earned sick time upon the request of an employee or a family member, caretaker, or medical professional acting on the employee'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.**
- (b) When the use of earned sick time is foreseeable or scheduled more than**

three working days ahead of the anticipated date of use, such as a scheduled medical appointment or similar matters, the employee shall provide notice to the employer within three business days of scheduling and when possible, shall schedule the use of earned sick time for these purposes in a manner that does not unduly disrupt the operations of the employer. Such notice may be provided orally, in writing, by electronic means or by any other means acceptable to the employer.

(4) Documentation of earned sick time.

(a) An employer may require reasonable documentation that earned sick time has been used for a covered purpose, if the employer has previously provided the policy to employees and if the requirement is made known at the time the sick time is requested.

(b) Documentation from a health care professional indicating that earned sick time is necessary shall be considered reasonable.

(c) 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 employee 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 employee's or family member's insurance plan.

(d) 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 earned sick time was taken for one of the purposes of Subsection (B)(1) of §13-17-3.

(e) 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.

(f) An employee who is required to provide documentation subject to provisions of this law, and fails to do so, may be subject to adverse employment action by the employer.

(5) An employer shall not require an employee to find a replacement worker as a

condition of using earned sick time nor count use of earned sick time in a way that will lead to discipline, discharge, demotion, non-promotion, suspension or any other adverse action.

(6) 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 in good faith alleged violations of this Ordinance.

(7) Confidentiality. All information an employer obtains related to the employee's reasons for taking earned sick time shall be treated as confidential and not disclosed except with the permission of the employee.

(C) Record Keeping

(1) Employers shall accurately track and record the amount of earned sick time accrued or used by each employee 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.

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

(3) An employer's failure to maintain records of the amount of earned sick time accrued or used by each employee is a violation of this Ordinance.

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

(5) 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.

(6) Employers may, but are not required to, track or provide earned sick time separately from other forms of paid time off.

§13-17-4. ENFORCEMENT OF SICK LEAVE PROVISIONS

(A) Administrative investigation and enforcement.

(1) Any person or organization may file an administrative complaint with the Department charging that an employer has violated this Ordinance as to any

employee or other person.

- (2) When the Department receives a complaint, the Department may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred.
- (3) The name of any employee identified in a complaint to the Department shall be kept confidential as long as possible. Where the Department determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.
- (4) 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.
- (5) 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, employees and other parties to determine their rights and responsibilities under this Ordinance.
- (6) Any business which fails to comply with a notice of inspection within 3-business days shall forfeit their City of Albuquerque business license.

(B) Civil enforcement.

- (1) 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.
- (2) Upon prevailing, the plaintiff shall recover all appropriate legal or equitable relief, liquidated damages calculated at three times the value of the earned sick time accrued, the costs and expenses of suit, and reasonable attorney's fees; and 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.
- (3) A plaintiff may establish a prima facie case of retaliation by way of proof that the employer took adverse action after the employee exercised rights protected under this Ordinance.

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

(C) Penalties.

(1) In addition to civil remedies for employees 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.

(2) Each section of this Ordinance and employee for whom a violation is identified shall be counted separately for purposes of identifying a separate offense.

§13-17-5. NOTICE TO EMPLOYEE'S OF SICK LEAVE REQUIREMENTS. REGULATIONS.

(A) Each employer subject to the provisions of §13-17-3 shall, at the time of hiring, provide notice to each employee:

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

(2) ways in which an employee may make notice to an employer of the use of leave, whether orally, in writing or electronically, and to whom.

(3) if the employer may require documentation for sick leave use, and is responsible for reimbursing out-of-pocket medical expenses that the employee 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 employee's or family member's insurance plan.

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

(5) that the employee has a right to file a complaint with the Department for any violation of this section and of §13-17-3 to §13-17-6, inclusive.

(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.

(C) The Department 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 Department shall administer this section within available appropriations.

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

§13-17-6. RELATIONSHIP TO OTHER REQUIREMENTS.

(A) This Ordinance provides for minimum standards for earned 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 an employee or employer under any valid contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous earned sick time to an employee than required herein.

§13-17-7. NO IMPACT ON MORE GENEROUS SICK TIME OR PAID TIME OFF POLICIES; NO SEPARATE TRACKING; NO ADDITIONAL SICK TIME 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, and that may be used for the same purposes and under the same conditions as earned sick time under this Ordinance, is not required to provide additional or separate earned sick time, nor to track sick time separately from paid time off, nor to in any way reduce the benefits provided to employees.

(C) If an employee 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 employee additional sick time.

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, 2020.