



Update

New Mexico's Paid Sick Leave Law

Effective July 1, 2022, the “Healthy Workplaces Act” now requires all private employers in the State of New Mexico, regardless of the size of their business or total workforce population, to provide eligible employees with up to 60 hours of paid sick leave per year for personal health or injury, to care for a family member, or for reasons related to domestic abuse. In addition, the New Mexico Department of Workforce Solutions (the “*Department*”) has provided further guidance on the Act to which private employers must also adhere, which can be found [here](#). New Mexico employers will need to comply with these requirements, which may include personnel training and/or revision to handbooks and leave policies to ensure notice to employees regarding rights to and procedures for requesting paid sick leave. Because there is no waiting period for the accrual and use of paid sick leave after the later of July 1, 2022 or an employee’s date of hire, compliance is required now. Here is what private employers in New Mexico need to know.

Who is Eligible for Paid Sick Leave?

Practically all employees of private companies are covered by the paid sick leave law¹. Specifically, eligible employees include all full-time, seasonal, and part-time employees working in the State of New Mexico, regardless of whether the employer’s physical office is based in New Mexico or not. Additionally, an employee’s length of employment, age, immigration status, state of residence, or duration of activities performed within the state do not affect coverage under the new law. Individuals performing services in homes for compensation are also covered, except if working as sole proprietors.

Under what Circumstances may Employees use Paid Sick Leave?

Employees may utilize paid sick leave for any of the following permitted reasons:

1. A mental or physical illness, injury, or health condition of the employee or the employee’s family member;²
2. A medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of the employee or the employee’s family member;
3. Preventive medical care for the employee or the employee’s family member;

¹ Only persons performing services on tribal land, independent contractors, those subject to Title II of the Federal Railway Labor Act, employees defined in the Federal Railroad Unemployment Insurance Act or the Federal Employers’ Liability Act, and public employees are expressly excluded from coverage.

² Under the Healthy Workplaces Act, a “family member” is defined to include the following individuals: (1) an employee’s spouse or domestic partner; (2) a person related to an employee or an employee’s spouse or domestic partner as a biological, adopted, or foster child, a stepchild or legal ward, or a child to whom the employee stands in loco parentis; (3) a biological, foster, step, or adoptive parent or legal guardian, or a person who stood in loco parentis when the employee was a minor child; (4) a grandparent or grandchild; (5) a biological, foster, step, or adopted sibling; (5) a spouse or domestic partner of a family member; or (6) an individual whose close relationship with the employee or their spouse or domestic partner is the equivalent of a family relationship.

Authors:



Angelo Spinola

Home Health, Home Care and
Hospice Chair
404.253.6280
aspinola@polsinelli.com



William C. Vail

Shareholder
404.253.6282
wvail@polsinelli.com



Burton F. Peebles

Associate
404.253.6289
bpeebles@polsinelli.com



4. For meetings at the employee's child's school or place of care related to the child's health or disability;
5. Or for absences necessary due to domestic abuse, sexual assault, or stalking suffered by the employee or a member of the employee's family associated with obtaining medical or psychological treatment or other counseling, relocating, preparing for or participating in legal proceedings, or obtaining services or assist family members.

How is Paid Sick Leave calculated?

Private employers operating in New Mexico must offer employees one hour of paid sick leave for every 30 hours worked. When calculating an employee's hours worked, employers may include travel time during the workday (excluding normal travel from home and to work) and "on call" time (i.e., when an employee is required to remain on the employer's premises or so close to them that they cannot use time effectively for their own purposes). Paid sick leave must be paid at an employee's regular rate of pay and must meet or exceed applicable minimum wage rates.

The newly effective law does not restrict how many hours of paid sick leave an employee can earn each year, but does cap total annual usage to 64 hours within a 12-month period³ as defined by the employer. Further, accrued but unused paid sick leave may rollover to the following 12-month period, up to a maximum of 64 hours.

As noted, the law is currently in effect, and there is no waiting period. Employees may start accruing paid sick leave from the later of their first day of employment or July 1, 2022, and employees may use accrued paid sick leave as needed for qualifying reasons as it accrues.

Employers Are Entitled to Notice and May Request Certifying Documentation?

The newly effective law provides for specific procedures for requesting accrued paid sick leave. Specifically, where an employee foresees⁴ the need for such leave, they must provide an oral or written request in advance and work to schedule periods of leave to avoid operational disruptions to their employer's business. If, however, leave is unforeseeable, notice must be provided as soon as practicable.

Employers are permitted to require reasonable documentation certifying that leave taken is for a qualifying reason in circumstances where paid sick leave is taken for two or more consecutive workdays. However, requesting employers must also permit employees 14 days to submit any requested documentation, and any documentation received must be kept confidential and for a period of four years.

Payouts of Accrued Paid Sick Leave Are Not Required at Separation

Employees are not entitled to monetary payouts or compensation for any unused, accrued paid sick leave upon the separation of employment from their employer, regardless of whether such separation results from involuntary employment termination, voluntary resignation, or retirement.

When are Employees Entitled to Reinstatement of Accrued Paid Sick Leave?

Former employees re-hired within 12 months of employment separation—regardless of whether re-employed for the same or similar position previously held with their employer—are entitled to all paid sick leave accrued prior to separation, without any delay or additional waiting period.

Required Posting of Workplace Notice

In accordance with the new law, New Mexico employers must now provide newly hired employees with

³ The 12-month period can be determined by using the calendar year, financial year or a rolling period measured starting from the date an employee first requests sick leave or backwards from the date an employee uses any earned sick leave.

⁴ Under the Final Rules published by the Department of Workforce Solutions, "foreseeable" means that an employee was aware of their need to take paid sick leave seven or more days before taking leave.

New Mexico's Paid Sick Leave Law



a written or electronic notice of their paid sick leave rights and responsibilities when hired and notify all employees of their rights under the new law by displaying a poster in the workplace in a conspicuous and accessible place.

Both the notice and the poster must be provided in [English](#), [Spanish](#), and any other language spoken by at least 10% of the workforce.⁵ For remote employees, the notices must be provided on employer websites or circulated by email or other electronic means.

Retaliation is Strictly Prohibited

Employers may not take retaliatory actions against employees for exercising their rights to accrued paid sick leave or requesting leave, including threats or adverse adjustments in work schedules.

What's Next?

New Mexico employers' employee handbooks, policies, and procedures should reflect New Mexico's newly effective paid sick leave law, including the collection and storage of information confidentially regarding reasons for leave, ensuring that all required notices and posters are made available as required by law, and tracking the accrual of such leave for current and newly hired employees.

Subscribers to Polsinelli Online Solutions' premium compliance materials package can locate an updated New Mexico Paid Sick Leave Policy [here](#).

Our team continues to monitor and review emerging laws in New Mexico and across the nation affecting the home care industry. For guidance, please do not hesitate to reach out to us directly.

⁵ Each willful failure to meet the notice, poster, and recordkeeping requirements may result in a \$250 penalty.