

New Mexico Paid Sick Leave (ESL) Healthy Workplaces Act (HWA)

The Act applies to most employees—full-time, part-time, seasonal, and temporary *performing work in New Mexico*. The Act also applies to employees who are salaried, tipped, or on a per-diem schedule, as well as employees paid on task, piece, or commission basis.

Exception

Telecommuters and remote workers who perform services remotely while within the geographical boundaries of New Mexico, other than on tribal land, but whose employers are based out of state and do not provide significant services in New Mexico or conduct significant business activities in the state, *are most likely not covered* due to a lack of minimum contacts with our state by the employer.

Starting July 1, 2022, or upon hire, whichever is later, covered employees must earn at least **one hour of sick leave for every 30 hours worked**.

There will be no waiting period after July 1st or the employee's date of hire, whichever comes later, for employees to be able to earn and use paid sick leave pursuant to the Act. Employees may use ESL as it accrues.

An employee cannot use more than 64 hours in a 12-month period (i.e., calendar year). The company will use the calendar year as the period each year (January 1 to December 31).

Paid sick leave that has been accrued but not used by an employee can carry or roll over to the next year, up to a maximum of 64 hours.



EFFECTIVE: 7/1/2022

If an employer has a paid time off (PTO) policy that is at least as generous as the HWA, then the employer need not offer additional ESL if the PTO policy provides "an amount of [ESL] sufficient to meet the accrual requirements of the Healthy Workplaces Act and that may be used for at minimum the same purposes and under the same terms and conditions."

Paid Sick Leave – Use of

Qualifying reasons for leave. Paid Sick Leave may only be used upon the employee's oral or written request. When possible, the request must include the expected duration of the sick leave absence.

Employees may use ESL, upon oral or written request, for absences due to:

- A mental or physical illness, injury, or health condition of the employee or the employee's family member.
- Medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of the employee or the employee's family member.
- Preventive medical care for the employee or the employee's family member.
- Meetings at the employee's child's school or place of care related to the child's health or disability.

Family Member

For the Healthy Workplaces Act, a "family member" means:

- An employee's spouse or domestic partner;
- 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;
- A biological, foster, step, or adoptive parent or legal guardian, or a person who stood in loco parentis when the

- Absences necessary due to domestic abuse, sexual assault, or stalking suffered by the employee or a member of the employee’s family to:
 - Obtain medical or psychological treatment or other counseling
 - Relocate
 - Prepare for or participate in legal proceedings
 - Obtain services or assist family members with the above activities

Employees may leave use in the **smallest increment the employer's payroll system uses** to account for absences or use of other time.

- employee was a minor child;
- A grandparent or grandchild;
 - A biological, foster, step, or adopted sibling; a spouse or domestic partner of a family member; or
 - An individual whose close association with the employee or the employee’s spouse or domestic partner is the equivalent of a family relationship.

Pay

Used sick leave is compensated at the employee’s usual hourly rate and benefits. The hourly rate must be at least minimum wage.

Employee Notice

The employee should notify the employer in advance when use of sick leave is foreseeable and make a reasonable effort to schedule the leave so it does not disrupt business operations. When use of sick leave is not foreseeable, the employee must notify the employer as soon as practicable.

Reasonable Documentation

An employer may require reasonable documentation verifying the sick leave was used for a covered purpose if the employee uses two or more consecutive workdays of sick leave.

Documentation signed by a health care professional—which does not necessarily have to be a doctor—indicating the sick leave taken is necessary and for a permissible purpose under the HWA, is reasonable documentation.

For two or more consecutive workday absences related to domestic abuse, sexual assault, or stalking, an employee may provide one of the following:

- a police report,
- a court-issued document,
- a signed statement by a victim services organization, clergy member, attorney, advocate, the employee, a family member, or any other person

When documentation is required under the Act, an employee will timely provide it to the employer upon request. The employee is allowed up to fourteen (14) days from the date they return to work to provide the documentation.

Accrual and Payment of Earned Sick Time

For leave accrual purposes, employees who are exempt from Federal or State overtime pay requirements are assumed to work 40 hours per week. However, if they normally work fewer than 40 hours a week, their leave accrual is based on their normal work hours per week.

“Hours Worked”

Employees will accrue paid sick leave for hours actually worked (includes overtime for nonexempt employees). This means that employees do not accrue paid sick leave while out of the office on vacation or while using sick leave or any other type of leave.

Paid Sick Leave – Upon Termination

Accrued unused paid sick leave is not paid out upon termination, resignation, retirement, or other separation from employment.

Rehire Rules

If an employee is rehired **within 12 months of the date of separation**, all sick leave the employee accrued but did not use must be reinstated. The returning employee may use the restored leave and accrue new sick leave immediately upon returning to work.

Transfer and Change in Ownership

If an employee is transferred to a separate division, entity, or location but is still employed by the same employer, the employee is entitled to keep and use all earned sick leave they accrued prior to transfer. When a different employer purchases or acquires a business or takes the place of an existing employer, all employees who remain employed by the successor employer must keep and may use all sick leave accrued with the previous owner.

Retaliation if Prohibited

Retaliation for exercising one's rights to earned sick leave is prohibited.

New Mexico – In SAP if the employee is working in Vermont, mark as “New Mexico”.



PAID SICK LEAVE Notice of Employee Rights

Healthy Workplaces Act | NMSA 50-17-1 to 50-17-12 | Effective date: July 1, 2022

Labor Relations Division

401 Broadway NE, Albuquerque, NM 87102

Albuquerque: (505) 841-4400 • Santa Fe: (505) 827-6838 • Las Cruces: (575) 524-6195

ACCRUAL

Employees accrue one hour of earned sick leave for every thirty hours worked, starting their first day of work. Up to 64 hours of unused earned sick leave can carry over year-to-year.

The Act provides minimum requirements; other laws or employer policies may provide for more accrual, use, or carry over of earned sick leave. The Act does not preempt or override the terms of any collective bargaining agreement.

The Act applies to all employees—full-time, part-time, seasonal, and temporary. The Act also applies to employees who are salaried, tipped, or on a per-diem schedule, as well as employees paid on task, piece, or commission basis. Employees may not contract out of or agree to waive their rights under the Act.

USE OF PAID SICK LEAVE

Employees may use up to 64 hours of earned sick leave per twelve-month period, if they work enough hours. Individual employers may set a higher limit. Employers may select when the 12-month period begins.

PAY

Used sick leave is compensated at the employee's usual hourly rate and benefits. The hourly rate must be at least minimum wage.

REASON FOR USE OF LEAVE

Employees may use accrued sick leave for the following reasons:

- Employee's treatment or diagnosis of illness, injury, or health condition, or preventative medical care.
- Care of employee's family members for treatment or diagnosis of illness, injury, or health condition, or preventative medical care.
- Meetings related to employee's child's health or disability.
- Absence necessary because of and related to domestic abuse, sexual assault, or stalking suffered by the employee or their family member.

USE OF SICK LEAVE

Employers must grant use of earned sick leave upon the oral or written request of an employee or an individual acting on the employee's behalf. When possible, the request must include the expected duration of the absence. An employer may not condition an employee's taking earned sick leave on the employee searching for or finding a replacement worker to cover during the employee's absence. An employer may not require an employee to use other paid leave before the employee uses sick leave pursuant to the Act.

The employee should notify the employer in advance when use of sick leave is foreseeable and make a reasonable effort to schedule the leave so it does not disrupt business operations. When use of sick leave is not foreseeable, the employee must notify the employer as soon as practicable.

NOTICE

An employer must give written or electronic notice of employee rights and the Act's terms and provisions to an employee at the start of employment. This notice must be in English, Spanish, or any language that is the first language spoken by at least ten percent of the employer's workforce, as requested by the employee.

REASONABLE DOCUMENTATION

An employer may require reasonable documentation verifying the sick leave was used for a covered purpose if the employee uses two or more consecutive workdays of sick leave. Employers must treat all information obtained related to an employee taking sick leave as confidential.

DOCUMENT RETENTION

Employers must keep records documenting hours worked by employees and earned sick leave accrued and taken by employees for four years.

RETALIATION PROHIBITED

Employers may not take or threaten an adverse action against an employee that is reasonably likely to deter employees from exercising or attempting to exercise their rights under the Act. Employers may not retaliate because an employee raises concerns about violations of the Act, exercises their rights under the Act, or participates in investigations or legal proceedings related to alleged violations of the Act.

Examples of retaliation include the following: denying use or delaying payment of earned sick leave, termination, reducing work hours, giving the employee undesirable assignments or scheduling, threats, discipline, counting use of earned sick leave hours as an absence that may lead to any adverse action, or any other employment action considered less favorable.

COMPLAINT PROCESS

The New Mexico Department of Workforce Solutions, Labor Relations Division, enforces the Act. Any employee aggrieved by a violation of the Act may file a complaint with the Labor Relations Division by calling (505) 841-4400, visiting www.dws.state.nm.us, or going to a New Mexico Workforce Connections Office. Notice: The Division will disclose complainant's identity as part of the investigation. An employee's legal status for presence in the United States is not a defense to any action brought pursuant to the Act.

Employees must file a complaint with the Division or file a civil action in a court within three years from the date the alleged violation occurred.

An employer found to be in violation of the Act will be liable for damages and/or penalties pursuant to the Act.

For more details, see the full text of the law and regulations, available at www.dws.state.nm.us