



e-Alert

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New Mexico Sick and Safe Leave Becomes Effective July 1, 2022

Background

Passed in April 2021, New Mexico's [Healthy Workplaces Act](#) (HWA) will become effective July 1, 2022. The HWA requires all private employers in New Mexico to provide earned sick leave (ESL) to all employees. Employees include full-time, part-time, seasonal, and temporary workers. State, city, or county employees, federal government employees, independent contractors, those performing services on tribal land, and employees subject to either Title II (air carriers) of the federal Railway Labor Act (RLA) or the Federal Railroad Unemployment Insurance Act (RUIA) are not covered by the HWA. The earned leave can be used for sick time, safe time, or to care for a qualifying family member.

Summary

Accrual of Leave

Accrual begins on the first day of employment or as of July 1, 2022, whichever is later. Employees must accrue ESL at a minimum rate of one hour for every 30 hours worked, and the earned time is available for use immediately. While employers are **not** permitted

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to cap the total accrual, employers may cap *the use* of ESL to 64 hours per 12-month period. Alternatively, employers may choose to front-load the full 64 hours of leave on the first of every year. For employees who begin employment after January 1st, employers may prorate the front-loaded portion of the 64 hours for use within the remainder of the year.

Employees are permitted to use leave-in hourly increments or the smallest increment the employer's payroll system uses to account for such absences. The ESL must be paid at the employee's regular rate of pay, and in no case may the hourly rate be less than minimum wage.

An employer may elect one of the following measurement periods to define the 12-month period in which leave may be used:

1. A calendar year; (must be used for the front-loaded option)
2. Any fixed 12-month period (for example, an anniversary year or fiscal year);
3. A rolling forward method from the date an employee first uses leaves; or
4. A rolling backwards method from the date an employee uses leave

Carryover Requirements:

Whether an employer chooses to frontload ESL or use an accrual method, at least 64 hours of unused leave must be allowed to carry over into the next year. For the purposes of carry-over provisions, the "year to year" must parallel the employer's 12-month period. Alternatively, an employer may provide a "buy-back" policy that allows employees to sell back unused leave *in excess of* 64 hours at the end of each year.

Covered Reasons for Leave:

- Mental or physical illness, injury, or health condition of an employee or family member;
- Medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of an employee or family member;
- Preventive medical care for an employee or family member;
- Domestic abuse, sexual assault, or stalking suffered by the employee or family member so long as the leave is required for the employee to obtain medical or psychological treatment or other counseling, relocate, prepare for, or participate in legal proceedings, or obtain services; or
- Meetings at a child's school or place of care related to the child's health or disability.

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Qualifying Family Members:

- 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 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.

Documentation Guidelines:

- Documentation is not required for absences of one day or less. Only when employees use leave on two or more consecutive workdays can employers then request "reasonable" documentation for the leave.
- "Sick" Time documentation: documentation signed by a health care professional indicating that the amount of leave taken was necessary.
- "Safe" Time documentation: police reports, a court-issued document, or a signed statement from a victim services organization, clergy member, attorney, advocate, the employee, a family member, or other person affirming the leave was taken for a covered purpose.
- Documentation may be written in the employee's native language.
- Employers cannot require the documentation to explain the nature of any medical condition or detail of domestic abuse, sexual assault, or stalking.
- Employers cannot require a signed statement to be in a particular format or notarized.

Requesting Leave

Under the WHA, employees can request leave by verbal or written request. The request should include the absence's anticipated duration and provide advance notice, if foreseeable. Employers may never require an employee to find a replacement worker or require an employee to use other paid leave under the HWA. Employers are not permitted to delay the start of leave because an employee has not provided the requested documentation.

Employee Separation and Rehire

If an employee separates from their employer, voluntarily or involuntarily, earned sick time

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is not required to be paid out. However, if an employee is rehired within 12 months, the accrued sick leave must be reinstated and available to the employee immediately upon rehire.

Employer Notice and Recordkeeping Requirements

Upon hire, employers are required to provide written or electronic notice to employees informing them of their right to leave, the manner in which leave is accrued, terms of leave use under the law, that the law prohibits retaliation against employees for leave use, that employees have the right to file a complaint with the state's labor department, and all means of enforcing violations of the law. The notice must be placed in an accessible location.

In addition, employers must provide quarterly year-to-date summaries, in writing, of sick leave accruals and usage. This may be provided via paystub or electronically (via email, website, or another reasonable method). Employers must also keep a record of hours worked and leave taken for four years.

Current Paid Time Off Policy

If an employer has a current paid time off (PTO) policy that is more generous than the minimum accrual and usage limits, they are compliant with the Act if employees are permitted to use leave for the same purposes and under the same terms and conditions of the WHA. Employers should make note that the carryover provisions must be met in order to comply.

Employer Next Steps

- New Mexico employers should review current sick leave and PTO policies and be prepared to comply with the WHA as of July 1, 2022.
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your policy, please [email us](#).

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