

NEW MEXICO EMPLOYERS MUST PROVIDE PAID SICK LEAVE AND PROTECTIONS STARTING JULY 1

Insights
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A new law is set to take effect on July 1 that will require New Mexico employers to provide paid sick leave to employees. The New Mexico Healthy Workplaces Act of 2021 will ring in major changes to New Mexico employers' sick leave policies, applying to all employers with any number of full- or part-time employees in the state. What do employers need to know about this significant development?

How Much Leave is Required?

The highly employee-favorable Act requires that New Mexico employers provide all employees with paid sick leave, either as an annual lump sum of at least 64 hours or via accrual at a rate of at least one hour of paid sick leave for every 30 hours worked. Overtime-exempt employees are presumed to work 40 hours per week for purposes of the Act.

What Can Leave Be Taken For?

Employees may use paid sick leave for a broadly defined list of purposes, for themselves or a member of their family. Permissible uses of sick leave include:

- Care for the employee's or their family member's mental or physical illness, injury, or health condition;
- Preventative medical care for the employee or their family member;

Related People



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- Meetings at the employee's child's school or place of care related to the child's health or disability; and
- Absences necessary due to domestic abuse, sexual assault, or stalking suffered by the employee or their family member to obtain medical or psychological treatment, relocate, or participate in legal proceedings.

What Else Does the Act Require?

The Act's other employee-favorable provisions include:

- Lenient documentation requirements, and no documentation requirement for an absence of one day or less;
- The ability to use paid sick leave in increments of, at largest, one hour, or smaller if the employer's payroll system can account for a smaller period of time;
- Employees need not use other paid leave before paid sick leave;
- Employees need only provide advance notice of taking leave, or the leave's expected duration, if reasonable;
- Employees cannot be required to search for or find a replacement worker to cover the hours during which they use sick leave; and
- Anti-retaliation protections.

Accrued, unused paid sick leave is not forfeited annually, but rather carries over into the next year. However, employers may limit employees to redeeming, at a minimum, 64 hours of paid sick leave annually. Employers need not compensate employees separating from the company for unused sick leave.

Employees who remain with a company but are transferred out of New Mexico stop accruing sick leave but retain any leave they already accrued. This presents an interesting scenario wherein an employee could accrue significant amounts of sick leave over a period of years, transfer to a state with less-favorable sick leave laws or laws that do not limit how much may be taken annually, and access a windfall of sick leave hours.

Due to the novelty of the Act, little guidance exists aside from [a guide published by the New Mexico Department of Workforce Solutions](#).

Conclusion

If you have any employees in New Mexico, they will begin accruing paid sick leave, protected by the employee-favorable Healthy Workplaces Act, on July 1. Fisher Phillips will continue to monitor these rules and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Employee Leaves and Accommodations Practice Group](#).