

New Mexico Employers, Take Note: Broad Paid Sick Leave Law Enacted

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By [Susan Gross Sholinsky](#), [Nancy Gunzenhauser Popper](#), and [Cynthia J. Park](#)*

On April 8, 2021, New Mexico's Governor, Michelle Lujan Grisham, signed [House Bill 20](#), the Healthy Workplaces Act ("Act"). Effective July 1, 2022, all private employers must provide eligible employees in New Mexico up to 64 hours of paid sick leave ("PSL") for each 12-month period, as described below. The Act applies to all employees, including full-time, part-time, seasonal, and temporary employees. An employer's existing sick leave or paid time off policy may be used to comply with the Act, provided it meets the minimum requirements of the Act.

Accrual of PSL

The Act requires employees to accrue PSL at a rate of at least one hour for every 30 hours worked, up to a maximum of 64 hours, beginning on the later of (i) the commencement of employment or (ii) July 1, 2022. There is no waiting period to use PSL, and employees may use any available PSL as it is accrued. PSL may be taken in one-hour increments, unless the employer allows PSL to be taken in smaller increments of time.

For purposes of determining the 12-month period in which accrued PSL may be used, employers may choose from the following: (i) the calendar year; (ii) the 12-month period measured forward from the date of the employee's initial use of accrued PSL; (iii) a rolling 12-month period measured backwards from the date an employee uses any accrued PSL; or (iv) any fixed 12-month period set by the employer (such as a fiscal year, a year required by other law, or a year starting on an employee's anniversary date).

All accrued, unused PSL can be carried forward to the following year, but an employer may cap usage at 64 hours of PSL in any 12-month period.

In general, employers are not required to pay out accrued and unused PSL upon termination of employment, except an employee may recover PSL as a remedy for a retaliatory personnel action that prevented the individual from using their accrued and unused PSL. In addition, if an employee is rehired within 12 months of separating from

the employer, the employer must reinstate any accrued and unused PSL, provided that such PSL benefits were not previously paid out upon termination of employment.

Permissible Uses

An employee may use accrued PSL for the following reasons:

- The employee's, or a family member's, mental or physical illness, injury or health condition, regardless of whether the illness, injury, or health condition has been diagnosed or requires medical care at the time of the PSL request;
- The medical diagnosis, care, or treatment of an employee's, or a family member's, mental or physical illness, injury, or health condition;
- The employee's, or a family member's, receipt of preventive medical care;
- To attend meetings at their child's school or place of care related to the child's health or disability; or
- An absence from work when an employee, or an employee's family member, who has experienced domestic abuse, sexual assault, or stalking obtains medical or psychological treatment or attends to related matters after such an event, such as counseling, legal proceedings, or relocation.

A "family member" is defined broadly as an employee's spouse or domestic partner, or a person related to the employee or the employee's spouse or domestic partner as: a biological, adopted, or foster child; a stepchild or legal ward; 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; a 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.

Employee/Employer Notice and Recordkeeping

Employers are required to notify employees in writing (which may be done electronically) at the time of hire and by displaying a poster (not yet available) of their rights under the Act. Such notice must be provided in English, Spanish, or any language that is the first language spoken by at least 10 percent of the employer's workforce, as requested by the employee.

Employees must request PSL orally or in writing (including electronically). If possible, the employee's request must include the expected duration of the PSL leave. Where the use of PSL is foreseeable, the employee must make a reasonable effort to provide such oral or written notice to the employer in advance of the anticipated use of the PSL leave and must make a reasonable effort to schedule the PSL leave so as not to unduly disrupt the operations of the employer. Where the use of PSL is not foreseeable, an

employee must notify the employer orally or in writing (including electronically) as soon as is practicable.

The Act also requires that employers maintain records for each employee for a four-year period, documenting hours worked and any accrued PSL that was used. Employers are also required to keep any health or safety records confidential and are prohibited from disclosing such records except with the express permission of the employee or as necessary for validation purposes for insurance disability claims, accommodations consistent with the federal Americans with Disabilities Act of 1990 (as required by the Act), or by court order.

Employers may not require that an employee search for or find a replacement worker to cover the hours during which the employee is using PSL as a condition of receiving any available PSL benefits.

The Act prohibits employers from retaliating or discriminating against an employee who has used PSL or otherwise attempted to exercise their rights under the Act including their use of PSL.

Interaction with Employer Paid Leave Policies, Local Laws, and Collective Bargaining Agreements

Employers may not require that an employee use other available paid leave (including leave required under federal, state, or local law) before using any accrued and unused PSL. In addition, the Act does not require an employer to provide additional PSL if the employer's existing sick leave or time-off policy provides employees with an amount of leave and compensation that meets or exceeds the statutory minimums, and satisfies the statutory requirements with respect to accrual, carryover, and permissible uses.

Additionally, the Act does not preempt local laws that already provide for paid leave or time-off benefits; however, to the extent any term or condition of the Act exceeds that of the local law, such benefits would be in addition to any accrued PSL. Currently, only local law in Bernalillo County, NM, provides paid time off to covered employees of private employers of at least one hour of paid time off (for any purpose) for every 32 hours worked, up to a maximum of 28 hours each year (increasing over the next few years for larger employers to up to 56 hours per year). Employers covered by both laws may have such leave run concurrently, so long as the policy allows employees to use at least 28 hours (or up to 56 hours for larger employers) of leave for any purpose (which satisfies the reasons provided by both laws). As the statewide law requires more hours of leave, employers must provide at least 64 hours total of leave per year.

Collective bargaining agreements ("CBAs") that already provide for paid sick leave for covered employees for the same permissible uses and under the same terms and conditions as provided in the Act will satisfy the Act's requirements. However, CBAs that provide for paid sick leave under terms and conditions that fall short of the Act's mandates will be in addition to any PSL entitlements under the Act.

What New Mexico Employers Should Do Now

- Review your current sick leave or paid time off policies, and assess whether they meet or exceed the Act's requirements, paying close attention to the Act's mandates on uses, accrual, and carryover.
- If you do not currently provide sick time to employees, begin developing a policy that is compliant with the Act and ready for implementation by July 1, 2022, the date on which the Act's requirements take effect.
- If you provide paid leave or time-off benefits pursuant to local law, determine whether PSL leave would run concurrently with or in addition to such existing benefits.
- Regularly monitor the New Mexico Department of Workforce Solutions website for any guidance, rules, or regulations regarding implementation of PSL benefits and for sample notice materials.

For more information about this Advisory, please contact:

[Susan Gross Sholinsky](#)

New York, NY
212-351-4789

sgross@ebglaw.com

[Nancy Gunzenhauser Popper](#)

New York, NY
212-351-3758

npopper@ebglaw.com

***[Cynthia J. Park](#)**, a Law Clerk – Admission Pending (not admitted to the practice of law) in the firm's New York office, contributed to the preparation of this Advisory.

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