

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-18-46 ENACTMENT NO. _____

SPONSORED BY: Patrick Davis

1 **ORDINANCE**

2 **ADDING A NEW ARTICLE 17 TO CHAPTER 13, ROA 1994 MANDATING**
3 **EMPLOYER PAID SICK LEAVE TO EMPLOYEES WITHIN THE CITY OF**
4 **ALBUQUERQUE; PRESCRIBING RULES AND PENALTIES; SETTING AN**
5 **EFFECTIVE DATE.**

6 **WHEREAS, all workers at some time during each year need limited time off**
7 **from work to take care of their own health needs or those of family members;**
8 **and**

9 **WHEREAS, according to analysis of paid sick leave in Albuquerque by the**
10 **University of New Mexico's Bureau of Business and Economic Research:**

- 11 • **36% of workers—100,596 employees—do not have access to paid sick**
12 **leave, including 68,984 full-time workers**
- 13 • **Employees least likely to have the right to earn sick time are employed**
14 **in leisure and hospitality (64% have no paid sick leave) and retail (44%**
15 **have no paid sick leave), by businesses with fewer than 10 employees**
16 **(53% have no paid sick leave), and part-time (68% have no paid sick**
17 **leave)**
- 18 • **90% of employees without the right to earn sick time earn less than**
19 **\$15,000 a year**
- 20 • **Albuquerque lags behind the rest of the country in rates of access to**
21 **paid sick leave**
- 22 • **Employees without paid leave go to work sick approximately 3.5 times a**
23 **year; 1.8 times with risk of spreading the illness**
- 24 • **48% of businesses that do have paid leave experience lower turnover**
- 25 • **employees strongly favor an ordinance guaranteeing the right to earn**
26 **sick time, including those currently with and without paid leave, working**

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1 full and part-time, and employed in all industries and by businesses of
2 all sizes; and

3 WHEREAS, workers in jobs with high public contact, such as health care,
4 service, restaurant and retail employees, are unlikely to have the right to earn
5 sick time, thereby increasing their risk of passing illnesses to co-workers and
6 customers; and

7 WHEREAS, the right to earn sick time as provided herein will reduce
8 recovery time from illnesses, enable people to obtain preventive medical care
9 and prenatal care, promote the use of regular medical providers rather than
10 emergency care, enable parents to care for sick children instead of sending
11 them to school, prevent people from spreading illness to the public and enable
12 victims of domestic abuse, sexual assault and stalking to get away from their
13 abusers, thereby protecting the health, safety and general welfare of people in
14 Albuquerque; and

15 WHEREAS, the public health benefits of the right to earn sick time will be
16 increased by covering both registered Albuquerque businesses and non-profit
17 corporations, like health care providers, whose employees care for elderly,
18 pregnant, newborn and other medically-vulnerable people, and by covering
19 businesses with fewer than 10 employees, which is the majority of businesses
20 in Albuquerque; and

21 WHEREAS, victims of domestic abuse, stalking and sexual assault often
22 lose days of paid employment or lose their jobs because they need time off to
23 recover and escape from such situations, and that lost income is particularly
24 devastating for such victims, who need economic security to ensure safety;
25 and

26 WHEREAS, the right to use earned sick time to care for a family member
27 must reflect the diversity of family caregiving relationships today; and

28 WHEREAS, one in six employees in the U.S. report that they or a family
29 member has been fired, suspended, punished or threatened by an employer
30 because they needed to take sick time to care for themselves or a family
31 member; and

32 WHEREAS, in their October 6th, 2017 editorial “Now it’s time to craft a
33 better ABQ sick leave law” the Albuquerque Journal Editorial board points out

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1 “Virtually half of 91,000 Albuquerqueans voted for the sick leave plan. Two
2 Journal polls showed strong support for sick leave. And again, almost to a
3 person, opponents have said they would support some type of paid sick leave
4 ordinance.”; and

5 WHEREAS, the **Albuquerque Hispano Chamber of Commerce has publicly**
6 **supported engagement of the people of Albuquerque to create a paid sick**
7 **leave ordinance**; and

8 WHEREAS, employers are encouraged to provide more generous paid time
9 off policies if they choose, and **should not be burdened by the provisions of**
10 **this Ordinance in doing so.**

11 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
12 ALBUQUERQUE:

13 Section 1. That a new Article 17 is added to Chapter 13, ROA 1994, reading
14 as follows:

15 “§13-17-1. SHORT TITLE. This article may be cited as the “Albuquerque Sick
16 Leave Ordinance.”

17 §13-17-2. DEFINITIONS. As used in this article:

18 CITY. The City of Albuquerque.

19 DEPARTMENT. The office of the City Attorney, unless the mayor
20 designates a different city agency or department.

21 DOMESTIC PARTNER. A person with whom another person maintains a
22 household and a mutual committed relationship, **without a legally recognized**
23 **marriage.**

24 EARNED SICK TIME. Time that is compensated at the same hourly rate and
25 with the same benefits, including health care benefits, as the employee
26 normally earns during hours worked and is provided by an employer to an
27 employee for the purposes described in section 13-17-3 of this article.

28 EMPLOYEE. Any person an EMPLOYER, as defined in this Ordinance,
29 suffers or permits to perform work for monetary compensation for at least 56
30 hours in a year within the municipal limits of the City, including on a part-time,
31 seasonal or temporary basis.

32 EMPLOYER. Any person, estate, business trust, association, receiver,
33 cooperative association, club, corporation, company, firm, partnership, joint

1 venture, syndicate, legal representative, or other entity or group of persons or
2 entities that is required to apply for a business registration from the City of
3 Albuquerque as required by the Business Registration Ordinance at Chapter
4 13, Article 1 of the Albuquerque Code of Ordinances, such entities' corporate
5 officers or executives or any non-profit corporation with a physical premises
6 within the City of Albuquerque. EMPLOYER shall include the City of
7 Albuquerque.

8 FAMILY MEMBER. A spouse or domestic partner; a child (whether of a
9 biological, foster, adoptive or step relationship), sibling, parent, grandparent,
10 grandchild, or legal ward or guardian of the employee or of the employee's
11 spouse or domestic partner, and the spouses or domestic partners of these
12 individuals; a person to whom the employee stands or stood in loco parentis;
13 or any other individual or relative whose close association with the employee
14 or employee's spouse or domestic partner is the equivalent of a family
15 relationship.

16 YEAR. A regular and consecutive 12-month period as determined by the
17 EMPLOYER.

18 §13-17-3. EMPLOYER REQUIREMENT TO PROVIDE SICK LEAVE TO
19 EMPLOYEES. USE OF LEAVE. EMPLOYER COMPLIANCE.

20 (A) Accrual of Sick Time

21 (1) Employees shall accrue a minimum of one hour of earned sick time
22 for every 30 hours worked, provided that employers may choose a higher
23 accrual rate or to provide for accrual of all earned sick time at the
24 beginning of the year.

25 (2) Employees shall not accrue or use more than 56 hours of earned
26 sick time in a year, unless the employer's policy provides for a higher
27 limit on use or accrual.

28 (3) Earned sick time shall begin to accrue on the employee's date of
29 hire, or on the effective date of this Ordinance if an employee is already
30 employed on that date.

31 (4) An employer may, but is not obligated to, loan earned sick time to an
32 employee in advance of accrual by such employee.

7 days

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What about
separation/employment

1 (5) Employees exempt from overtime requirements under federal and
2 state law will be assumed to work no more than 40 hours in each work
3 week for purposes of earned sick time accrual, unless the employer
4 selects a higher limit.

5 (6) Carry-over of earned sick time. **Unused accrued earned sick time**
6 **shall be carried over to the following year, but employees cannot carry**
7 **over more than 56 hours of earned sick time in a year, unless the**
8 employer's policy provides otherwise.

9 (7) If an employee is transferred but remains employed by the same
10 employer, or if a successor employer replaces the original employer, or if
11 an employee separates from employment but is rehired by the same
12 employer within 12 months, the employer shall reinstate all previously
13 accrued and unused earned sick time to the employee, up to a maximum
14 of 56 hours unless the employer chooses to provide more, or unless the
15 employer previously chose to pay out the earned sick time upon transfer
16 or separation.

17 (B) Permitted Uses and Procedures for Sick Time

18 (1) An employer shall permit an employee to use the earned sick time
19 accrued for:

20 (a) An employee's mental or physical illness, injury or health
21 condition; medical diagnosis, care or treatment of a mental or physical
22 illness, injury or health condition; or preventive medical care; or

23 (b) An employee to care for a family member with a mental or
24 physical illness, injury or health condition; to care for a family member
25 who needs medical diagnosis, care, or treatment of a mental or
26 physical illness, injury or health condition; to care for a family member
27 who needs preventive medical care; or

28 (c) Closure of the employee's place of business or a family
29 member's school or place of care for public health reasons; or

30 (d) Absence necessary due to domestic abuse, sexual assault or
31 stalking suffered by the employee or employee's family member,
32 provided the leave is for the employee to obtain medical or
33 psychological treatment or other counseling, relocate, prepare for or

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1 participate in legal proceedings, or obtain services, or to assist the
2 employee's family member with any of the above activities.

3 (e) An employee shall not be entitled to use accrued earned sick
4 time until the employee has worked 56 hours in a year. ?

5 (2) Maximum 90-day delay in benefit.

6 (a) Employees shall be entitled to use accrued earned sick time
7 beginning on the 90th calendar day following the date of hire, or the
8 effective date of this law, whichever is later, unless the employer's
9 policy provides that employees may use accrued time earlier.

10 (3) Request for earned sick time.

11 (a) An employer shall provide earned sick time upon the request
12 of an employee or a family member, caretaker, or medical
13 professional acting on the employee's behalf. Such request may be
14 made orally, in writing, by electronic means or by any other means
15 acceptable to the employer. When possible, the request shall include
16 the expected duration of the absence.

17 (b) When the use of earned sick time is foreseeable or scheduled
18 more than three working days ahead of the anticipated date of use,
19 such as a scheduled medical appointment or similar matters, the
20 employee shall provide notice to the employer within three business
21 days of scheduling and when possible, shall schedule the use of
22 earned sick time for these purposes in a manner that does not unduly
23 disrupt the operations of the employer. Such notice may be provided
24 orally, in writing, by electronic means or by any other means
25 acceptable to the employer.

26 (4) Documentation of earned sick time.

27 (a) **An employer may require reasonable documentation that**
28 **earned sick time has been used for a covered purpose, if the employer**
29 **has previously provided the policy to employees and if the requirement**
30 **is made known at the time the sick time is requested.**

31 (b) Documentation from a health care professional indicating that
32 earned sick time is necessary shall be considered reasonable.

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1 (c) If an employer chooses to require documentation from a
2 health care professional, the employer is responsible for reimbursing
3 out-of-pocket medical expenses that the employee incurs in obtaining
4 the documentation, if the medical visit is not medically necessary and
5 made solely to obtain documentation for the employer, and if such costs
6 are not covered by the employee's or family member's insurance plan.

7 (d) In cases of domestic abuse, sexual assault or stalking,
8 reasonable documentation may include a police report, a court-issued
9 document, or a signed statement from a victim services organization,
10 clergy member, attorney, advocate, or other person affirming that the
11 earned sick time was taken for one of the purposes of Subsection (B)(1)
12 of §13-17-3.

13 (e) An employer may not require that the documentation explain
14 the nature of any medical condition or the details of the domestic abuse,
15 sexual assault or stalking.

16 (f) An employee who is required to provide documentation
17 subject to provisions of this law, and fails to do so, may be subject to
18 adverse employment action by the employer.

19 (5) An employer shall not require an employee to find a replacement
20 worker as a condition of using earned sick time nor count use of earned
21 sick time in a way that will lead to discipline, discharge, demotion, non-
22 promotion, suspension or any other adverse action.

23 (6) An employer shall not take or threaten any adverse action
24 whatsoever against an employee because the employee has exercised or
25 attempted to exercise rights protected under this Ordinance or has in
26 good faith alleged violations of this Ordinance.

27 (7) Confidentiality. All information an employer obtains related to the
28 employee's reasons for taking earned sick time shall be treated as
29 confidential and not disclosed except with the permission of the
30 employee.

31 (C) Record Keeping

32 (1) Employers shall accurately track and record the amount of earned
33 sick time accrued or used by each employee for each pay period in any

1 format the employer chooses, keep such records for the time period
2 required for employment and payroll records set forth in 11.3.400.401(F)
3 NMAC, and make such records available to the Department upon
4 request.

5 (2) Upon an employee's request, an employer shall inform an employee
6 of the amount of earned sick time accrued and used by the employee.

7 (3) An employer's failure to maintain records of the amount of earned
8 sick time accrued or used by each employee is a violation of this
9 Ordinance.

10 (4) In the absence of records, the fact finder may rely on accurate and
11 contemporaneously maintained records of the employee's work time to
12 determine the amount of sick time accrued and used, or, if no accurate
13 records are available, on the employee's reasonable estimates of hours
14 worked.

15 (5) Employers who offer paid time off policies may comply with the
16 above provisions by tracking and recording the equivalent amount of
17 paid time off provided and used.

18 (6) Employers may, but are not required to, track or provide earned sick
19 time separately from other forms of paid time off.

20 §13-17-4. ENFORCEMENT OF SICK LEAVE PROVISIONS

21 (A) Administrative investigation and enforcement.

22 (1) Any person or organization may file an administrative complaint with
23 the Department charging that an employer has violated this Ordinance
24 as to any employee or other person.

25 (2) When the Department receives a complaint, the Department may
26 review records regarding all employees at the employer's worksite in
27 order to protect the identity of any employee identified in the complaint
28 and to determine whether a pattern of violations has occurred.

29 (3) The name of any employee identified in a complaint to the
30 Department shall be kept confidential as long as possible. Where the
31 Department determines that an employee's name must be disclosed in
32 order to investigate a complaint further, it may so do only with the
33 employee's consent.

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- 1 (4) When the Department identifies a violation, it may attempt to reach
- 2 an administrative resolution for payment of damages and penalties as
- 3 set forth herein prior to bringing enforcement action in court.
- 4 (5) Any guidelines or rules promulgated by the City for the above
- 5 purposes shall have the force and effect of law and may be relied on by
- 6 employers, employees and other parties to determine their rights and
- 7 responsibilities under this Ordinance.
- 8 (6) Any business which fails to comply with a notice of inspection within
- 9 3-business days shall forfeit their City of Albuquerque business license.

10 (B) Civil enforcement.

- 11 (1) The Department or any person or any entity a member of which is
- 12 aggrieved by a violation of this Ordinance may bring a civil action in a
- 13 court of competent jurisdiction against an employer violating any
- 14 provision of this Ordinance within four years from the date the alleged
- 15 violation occurred. Such action may be brought without first seeking the
- 16 administrative remedies described in (A), above.
- 17 (2) Upon prevailing, the plaintiff shall recover all appropriate legal or
- 18 equitable relief, liquidated damages calculated at three times the value
- 19 of the earned sick time accrued, the costs and expenses of suit, and
- 20 reasonable attorney's fees; and in the case of retaliation or adverse
- 21 action, the plaintiff shall also recover actual damages, including but not
- 22 limited to back pay, and shall have a right to reinstatement, rescission
- 23 of discipline or other appropriate relief.
- 24 (3) A plaintiff may establish a prima facie case of retaliation by way of
- 25 proof that the employer took adverse action after the employee
- 26 exercised rights protected under this Ordinance.

- 27 (4) In an action brought by the Department, any damages recovered shall
- 28 be payable to the individual employees who experienced the violation.

29 (C) Penalties.

- 30 (1) In addition to civil remedies for employees provided herein, any
- 31 employer found to be in violation of this article shall also be liable for a
- 32 civil penalty payable to the City of fifty dollars per week for each

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1 separate violation, not to exceed the amount set forth in Section 1-1-99
2 for each separate offense.

3 (2) Each section of this Ordinance and employee for whom a violation is
4 identified shall be counted separately for purposes of identifying a
5 separate offense.

6 §13-17-5. NOTICE TO EMPLOYEE'S OF SICK LEAVE REQUIREMENTS.
7 REGULATIONS.

8 (A) Each employer subject to the provisions of §13-17-3 shall, at the time
9 of hiring, provide notice to each employee:

10 (1) of the entitlement to earned sick time for employees, the amount of
11 sick leave provided to employees and the terms under which earned sick
12 time may be used

13 (2) ways in which an employee may make notice to an employer of the
14 use of leave, whether orally, in writing or electronically, and to whom.

15 (3) if the employer may require documentation for sick leave use, and is
16 responsible for reimbursing out-of-pocket medical expenses that the
17 employee incurs in obtaining the documentation, if the medical visit is
18 not medically necessary and made solely to obtain documentation for
19 the employer, and if such costs are not covered by the employee's or
20 family member's insurance plan.

21 (4) that retaliation by the employer against the employee for requesting
22 or using sick leave for which the employee is eligible is prohibited

23 (5) that the employee has a right to file a complaint with the Department
24 for any violation of this section and of §13-17-3 to §13-17-6, inclusive.

25 (B) Employers may comply with the provisions of this section by
26 displaying a poster in a conspicuous place, accessible to employees, at the
27 employer's place of business that contains the information required by this
28 section in both English and Spanish.

29 (C) The Department may adopt regulations, in accordance with Chapter
30 2, Article 15, to establish additional requirements concerning the means by
31 which employers shall provide such notice. The Department shall administer
32 this section within available appropriations.

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1 (D) On or before the effective date of this Ordinance, the Department
2 shall make available on its website a summary notice to employees in
3 English and Spanish of each provision of this Ordinance.

4 §13-17-6. RELATIONSHIP TO OTHER REQUIREMENTS.

5 (A) This Ordinance provides for minimum standards for earned sick
6 time and shall not be construed as creating or imposing any requirement
7 in conflict with, nor to preempt or otherwise limit or affect the applicability
8 of, any other law, contract, regulation, requirement, policy or standard
9 that provides for more generous compensation, rights, benefits or
10 protections.

11 (B) This article shall not be construed to diminish or impair the
12 rights or obligations of an employee or employer under any valid
13 contract, collective bargaining agreement, employment benefit plan or
14 other agreement providing more generous earned sick time to an
15 employee than required herein.

16 §13-17-7. NO IMPACT ON MORE GENEROUS SICK TIME OR PAID TIME OFF
17 POLICIES; NO SEPARATE TRACKING; NO ADDITIONAL SICK TIME
18 REQUIRED.

19 (A) Nothing in this Ordinance prohibits an employer from providing
20 more generous policies than the minimum established under this Ordinance,
21 and this Ordinance shall not be interpreted in a way that makes it in any way
22 more difficult for employers to offer benefits that exceed the requirements of
23 this Ordinance.

24 (B) Any employer with a paid time off policy that makes available an
25 amount of paid time off sufficient to meet or exceed this Ordinance's accrual
26 and use requirements, and that may be used for the same purposes and
27 under the same conditions as earned sick time under this Ordinance, is not
28 required to provide additional or separate earned sick time, nor to track sick
29 time separately from paid time off, nor to in any way reduce the benefits
30 provided to employees.

31 (C) If an employee covered by a paid time off policy uses all available
32 paid time off for reasons unrelated to sick time, the employer is not required
33 to provide the employee additional sick time.

1 **Section 2. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
2 clause, word or phrase of this ordinance is for any reason held to be invalid or
3 unenforceable by any court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining provisions of this ordinance. The Council
5 hereby declares that it would have passed this ordinance and each section,
6 paragraph, sentence, clause, word or phrase thereof irrespective of any
7 provisions being declared unconstitutional or otherwise invalid.

8 **Section 3. COMPILATION.** The amendments set forth in Sections 1 above
9 shall amend, be incorporated in and made part of the Revised Ordinances of
10 Albuquerque, New Mexico, 1994.

11 **Section 4. EFFECTIVE DATE.** This ordinance shall take effect January 1,
12 2020.

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