

Please find the attached highlights of the guidelines concerning the State of NM Healthy Workplace Act which takes effect July 1, 2022. All parishes and schools must be in compliance with this new Act. Please read The Guide to NM's Paid Sick Leave Law at www.DWS.STATE.NM.US. The Diocesan policy for Regular full-time employees is better than what the Act requires. Part-Time and temporary must now be given PTO/sick leave time off at the rate established by the state of NM. The Diocesan Policy will be updated to reflect the changes in the near future.

Employers with paid-time-off policies that are more generous than the minimum accrual and usage limits specified in the act are compliant if employees may use the leave for the same purposes and conditions specified in the Act.

Major points to be in compliance:

1. Full time employees must get a minimum of 64 hours of PTO/sick leave per year.
2. Part time and temporary employees accrue PTO/sick leave at a rate of 1 hour per 30 hours worked.
3. PTO/sick leave earned must be tracked in detail either in ADP centralized Payroll software or on software used by your Finance Department. (Microsoft excel or similar).
4. Clergy /Priests already receive 30 days (Personal Time Off-PTO) so they are more than covered by requirements of this act.
5. Post the attached Sick Leave Poster where it is visible.

I am sure there will be some questions after you have FULLY READ the guidelines. Please contact me at 505-240-1028 or by email.

The Healthy Workplaces Act

Healthy Workplaces Act is a law requiring all private employers, regardless of size, to allow New Mexico employees to accrue and use paid sick leave at a rate of one hour per 30 hours worked.

The Act does not set a limit for how many hours of paid sick leave an individual can earn, although it does cap employee usage of leave at 64 hours per calendar year. Employers may allow a higher yearly usage limit, but the legal requirement is up to 64 hours per year if the employee has accrued the leave. 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. Again, employers are permitted to have a more generous policy with respect to carryover if they wish to.

More Generous Provisions Option

The law presents minimums, but employers can choose to offer more generous accrual, use, and carryover limits. Employers with paid-time-off policies that are more generous than the minimum accrual and usage limits specified in Act are compliant with the Act if employees may use the leave for the same purposes and under the same terms and conditions specified in the Act. The Division will require employers to honor their more generous policies if an employee files a complaint against them. Here is what a more generous policy would look like:

- Accrual: Employees accrue more than one hour per 30 hours worked.

- Use: Employees can use more than 64 hours of paid sick leave per year.
- Carryover: Employees can carry over more than 64 hours of unused paid sick leave to the next year.

Accrual Requirements

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. Employers can choose whether their employees will accrue paid sick leave on a continuous basis throughout the year or be “frontloaded” the sick leave hours the employee could accrue within the year all at the beginning of the year. Employers can use different accrual structures for different types of employees, but all employees must still earn a minimum of one hour per 30 hours worked. Employer records and policies must carefully reflect these practices.

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.

Remember, employers can never cap an employee’s accrual.

Businesses can use different accrual structures for different categories of employees, such as frontloading salaried employees and using continuous accrual for part-time employees. But businesses must be sure to keep clear records of hours worked, leave accrued, and leave used for employees in all categories. In all cases, employers must ensure all employees accrue paid sick leave at the rate of at least one hour per 30 hours worked.

“Hours Worked”

Employees will accrue paid sick leave for hours actually worked. 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.

Overtime

All employees (except salaried exempt) must accrue paid sick leave for all hours actually worked. This includes overtime hours worked, which accrues at the same minimum rate as regular hours: one hour per 30 hours worked.

Tracking Hours Worked for Salaried Employees

With respect to salaried, FLSA-exempt employees who work fewer than 40 hours per week, businesses must now keep track of hours worked to calculate how many hours of paid sick leave salaried exempt employee are entitled to accrue. If the salaried exempt employee works more than 40 hours per week, then 40 hours per week will be used to calculate accrued sick leave. The HWA’s recordkeeping and notice requirements apply equally to all classifications of employees.

Cashing or Paying Out Unused Leave

The Act does not require unused sick leave to be cashed out or paid out to employees upon separation, whether due to termination, resignation, retirement, or any other reason. However, cashing out accrued

but unused PTO may be required in some circumstances; accrued or earned leave such as PTO may be payable pursuant to an employer's policy, any applicable CBA, or as otherwise required by law.

Leave Buy Back

If your company policy allows for it and the employee elects to do so, employees can sell back or "cash out" unused leave. The Department would deem the paid-out leave *used* and not subject to the carryover requirement.

Usage Requirements

Permissible Reasons for Using Paid Sick Leave

Employers cannot require employees to use HWA leave.

Yearly Usage Limits

Employers are never permitted to stop an employee's accruals, but employers can limit how many hours employees can use each year, which is 64 hours. Again, this is a minimum, so employers can choose to increase this limit. If necessary, be sure employees are aware that their leave balance might be higher than the number of hours they have available for use.

No Waiting Period

As soon as an employee accrues sick leave or an employer frontloads it, the employee may use the leave immediately.

Timely Payment Required

Employers must pay for sick leave used on the same scheduled payday as regular wages.

Sick Leave Pay

Fluctuating Work Hours

If the number of hours an employee works fluctuates from week to week, the employer must use the average number of hours worked by the employee during the preceding two weeks. This average will be the number of hours for which a sick employee must be paid for "one day" of absence.

Example 1: Martha worked 28 hours over 5 days in week one and worked 32 hours over 5 days in week two. Over those two weeks, she worked a total of 10 days and 60 hours. She then took one day off in week three. The employer must calculate the average number of hours worked per day over the past two weeks. Finding it is 6 hours (60 divided by 10), Martha will be paid for 6 hours, and 6 hours will be deducted from her sick leave balance.

Employee Notice to Employer

When an employee needs to use paid sick leave, the employee or an individual acting on the employee's behalf must make an oral or written request to the employer to use the leave. When possible, the request must include the expected duration of the sick leave absence.

When the need to use earned sick leave is foreseeable, the employee must make a reasonable effort to give the employer notice before using the earned sick leave. (“Foreseeable” means an employee is aware of the need to use earned sick leave seven or more days before such use.) The employee must also make a reasonable effort to schedule use of earned sick leave in a way that does not disrupt the operations of the employer. When the need to use earned sick leave is not foreseeable, the employee must notify the employer as soon as practicable.

Documentation from Employee

Employers may not require documentation from an employee about their use of earned sick leave unless the employee uses two or more consecutive workdays of earned sick leave.

- An employer must never require that the documentation explain the nature of any medical condition or the details of the domestic abuse, sexual assault, or stalking.
- An employer must never delay the use of earned sick leave because the employer has not yet received documentation.
- All information and documentation received about an employee's reasons for taking earned sick leave is confidential.
- Employers must not disclose the above-referenced information except with the employee's permission or as necessary for validation of disability insurance claims, accommodations consistent with the federal Americans with Disabilities Act (ADA), as required by the Healthy Workplaces Act, or by Court Order.

Notice to Employees & Employer Recordkeeping

Written Notice Upon Hire

Paid Sick Leave Poster

Quarterly Summaries - Employers must provide employees with an accurate year-to-date summary, in writing, of hours worked, sick leave accrued, and sick leave used at least once every calendar quarter. This may be electronically, including by email, website, mobile application, or other reasonable method.

Single PTO Policies

Employers who choose to use a single PTO policy must ensure their policy tracks all the HWA's terms and conditions. Employers must comply with the recordkeeping requirements of the HWA, display the poster, and inform employees of their HWA rights upon hire. Employers must provide quarterly year-to-date summaries to employees that list hours worked, PTO accrued, and PTO used. Finally, the Division cautions employers with a single PTO policy to make sure employees are aware that if they exhaust their PTO balance for absences not related to the purposes contemplated the Act, such as vacation, they will not have leave available in case of illness.

In sum, unless the PTO is earned on the same basis, can be used under the same conditions, and is subject to the same requirements of the HWA, paid sick leave required by the Act will be in addition to any other paid leave than an employer may grant.

More Information

The LRD recommends that employers and other interested parties carefully read the New Mexico Administrative Code (NMAC) Regulations related to paid sick leave. These regulations contain specific requirements that employers and employees must follow to be compliant with the Act. The regulations also outline the procedures the LRD follows for investigating complaints and enforcing the Act. The regulations may be found at www.dws.state.nm.us/NMPaidSickLeave.

DISCLAIMER: The information in this Reference Guide does not, and is not intended to, constitute legal advice; all information contained herein is only for informational purposes. This information may not constitute the most up-to-date legal or other information. Individuals wanting legal advice about the Healthy Workplaces Act should consult a qualified attorney.