

SENATE BILL 11

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Mimi Stewart and Michael Padilla and Christine Chandler and
Linda Serrato and Patricia Roybal Caballero

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL LEAVE ACT; CREATING THE PAID FAMILY AND MEDICAL LEAVE FUND; PROVIDING FOR THE PAID FAMILY AND MEDICAL LEAVE PROGRAM TO PAY AN ELIGIBLE EMPLOYEE A PERCENTAGE OF THE EMPLOYEE'S SALARY TO ALLOW THE EMPLOYEE TO BOND WITH A NEW CHILD OR TO CARE FOR A FAMILY MEMBER; LIMITING THE TIME ALLOWED FOR PAID FAMILY AND MEDICAL LEAVE; EXCEPTING CERTAIN EMPLOYEES; PROVIDING FOR ADMINISTRATION OF THE PROGRAM BY THE WORKFORCE SOLUTIONS DEPARTMENT; PREEMPTING SIMILAR PROGRAMS; CREATING A TEMPORARY

.223784.6AIC February 14, 2023 (8:55am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

ADVISORY COMMITTEE; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Paid Family and Medical Leave Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Paid Family and Medical Leave Act:

A. "claim for leave" means an application for leave compensation that an employee makes to the department pursuant to the Paid Family and Medical Leave Act in accordance with department rules;

B. "department" means the workforce solutions department, the secretary or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "domestic partner" means a person with whom another person maintains a household and a mutual committed relationship without a legally recognized marriage;

D. "employee" means a person working within the state who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, and includes a person employed by the state or a political subdivision of the state. "Employee" does not mean an employee of an employer subject to the provisions of Title II of the federal Railway Labor Act or an employee as defined in either the federal Railroad Unemployment Insurance Act or the federal

.223784.6AIC February 14, 2023 (8:55am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Employers' Liability Act;

E. "employer" means a person that has one or more employees within the state and includes an agent of an employer and the state or a political subdivision of the state;

F. "family leave" means leave for which an employee can apply for leave compensation pursuant to the Paid Family and Medical Leave Act and that is granted to the employee to allow the employee to bond with a child of the employee within twelve months of the birth or adoption of a child or placement of a foster child with the employee, to care for a family member if the family member has a serious health condition or following the death of a child for whom the employee would have otherwise qualified for family leave;

G. "family member" means a person who is:

(1) regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom an employee stands in loco parentis or a person to whom the employee stood in loco parentis when the person was a minor;

(2) a biological, adoptive or foster parent, stepparent or legal guardian of an employee or the employee's spouse or domestic partner or a person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor;

(3) a person to whom an employee is legally married under the laws of any state or a domestic partner of

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

the employee;

(4) a grandparent, great-grandparent, grandchild or sibling, whether a biological, foster, adoptive or step relationship, of an employee or an employee's spouse or domestic partner; or

(5) any other individual related by blood or affinity whose close association with the employee or employee's spouse or domestic partner is the equivalent of a family relationship;

H. "fund" means the paid family and medical leave fund;

I. "health care provider" means an individual licensed or certified to provide health care in the ordinary course of business;

SFC→J. "Indian tribe" means a federally recognized Indian nation, tribe or pueblo, wholly or partially located in New Mexico, a governmental unit, subdivision, agency, department or instrumentality thereof or a business enterprise wholly owned by such an Indian nation, tribe or pueblo;←SFC

SFC→J.←SFC SFC→K.←SFC "leave" means family leave, safe leave or medical leave for which an employee can apply for leave compensation pursuant to the Paid Family and Medical Leave Act;

SFC→K.←SFC SFC→L.←SFC "leave compensation" means income that the department pays from the fund to an employee who takes family, safe or medical leave;

.223784.6AIC February 14, 2023 (8:55am)

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

SFC→~~L.~~←SFC SFC→~~M.~~←SFC "medical leave" means leave for which an employee can apply for leave compensation pursuant to the Paid Family and Medical Leave Act ~~STBTC→~~that is granted to an employee←STBTC to allow the employee to provide care for the employee's own serious health condition;

SFC→~~M.~~←SFC SFC→~~N.~~←SFC "safe leave" means leave for which an employee can apply for leave compensation pursuant to the Paid Family and Medical Leave Act that is granted to an employee who is the victim or whose family member is the victim of domestic violence, stalking, sexual assault or abuse. "Safe leave" applies if the covered employee is using the leave from work to protect the employee or the employee's family member by:

(1) seeking a civil protection order against a perpetrator;

(2) obtaining medical care or mental health counseling for the employee or for the employee's children to address physical or psychological injuries;

(3) seeking new housing, relocating or making the employee's home secure from a perpetrator; or

(4) attending or preparing for court-related proceedings or seeking legal assistance to address issues related to the act of domestic violence, stalking, sexual assault or abuse;

N. "secretary" means the secretary of workforce solutions;

.223784.6AIC February 14, 2023 (8:55am)

underscoring material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

O. "serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

(1) inpatient care in a hospital, hospice or residential medical facility; or

(2) continuing treatment by a health care provider;

P. "spouse" means a partner to a lawful marriage; and

Q. "wages" means all remuneration for services, including commissions, bonuses or unpaid loans to employees and the cash value of all remuneration in any medium other than cash.

SECTION 3. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE FUND--CREATION.--

A. The "paid family and medical leave fund" is created in the state treasury and shall be administered by the department. The fund shall be held for the benefit of the employees who paid into the fund and shall consist of all revenue collected and attributable to the Paid Family and Medical Leave Act. Money in the fund shall be invested by the state investment officer. Income from investment of the fund shall be credited to the fund.

B. Money in the fund is appropriated to the department to distribute leave compensation pursuant to the Paid Family and Medical Leave Act and to cover the costs of

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

administration and outreach for the paid family and medical leave program pursuant to that act.

C. Money shall be disbursed from the fund only on warrant issued by the department of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

D. Beginning January 1, 2027, and not later than October 1 of each calendar year, the secretary shall ensure and maintain the self-sufficiency and solvency of the fund by:

- (1) performing an annual financial analysis;
- and
- (2) setting the premium for the following calendar year, based on the percentage of employee wages and at the rate necessary to obtain a total amount of contributions equal to one hundred thirty-five percent of the benefits paid during the previous fiscal year and all administrative costs for payment of those benefits during the previous fiscal year, minus the amount of net assets remaining in the fund as of June 30 of the current calendar year. For purposes of this paragraph, the costs of administration include the costs of repayment of interest and principal on general fund appropriations pursuant to Section 15 of this 2023 act.

SECTION 4. [NEW MATERIAL] APPLICABILITY--CONTRIBUTIONS TO FUND--REMITTANCE OF CONTRIBUTIONS--EXEMPTION FOR PRIVATELY RUN

.223784.6AIC February 14, 2023 (8:55am)

PROGRAMS--REQUIREMENTS OF PRIVATELY RUN PROGRAMS.--

A. The Paid Family and Medical Leave Act applies to:

(1) all public and private employees who are subject to state jurisdiction, except those employees who are employed by the United States;

(2) the employers of employees as described in Paragraph (1) of this subsection, whether or not the employer is physically located in the state;

(3) self-employed individuals subject to state jurisdiction who opt into the program; and

(4) SFC→~~tribal governments, wholly or partially located in New Mexico,~~←SFC SFC→Indian tribes←SFC that elect to be covered, or to terminate coverage, in the program for their employees.

B. Beginning January 1, 2025 and for each calendar quarter thereafter until January 1, 2028, there is assessed against each employee one-half percent of the employee's STBTC→~~earnings. An employee's contribution to the fund shall not be deducted from the employee's~~←STBTC STBTC→wages. An employee shall not be required to make contributions to the fund from←STBTC leave compensation. Beginning January 1, 2028 and for each calendar quarter thereafter, there is assessed against each employee an assessment on the employee's STBTC→~~earnings~~←STBTC STBTC→wages←STBTC at fifty-five percent of the premium set by the secretary pursuant STBTC→to←STBTC

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Subsection D of Section 3 of the Paid Family and Medical Leave Act.

C. Beginning January 1, 2025 and for each calendar quarter thereafter until January 1, 2028, there is assessed against each employer with five or more employees an amount equal to four-tenths percent of each participating employee's STBTC→**earnings**←STBTC STBTC→**wages**←STBTC . Beginning January 1, 2028 and for each calendar year thereafter, there is assessed against each employer with five or more employees an amount equal to each participating employee's STBTC→**earnings**←STBTC STBTC→**wages**←STBTC at forty-five percent of the premium set by the secretary under Subsection D of Section 3 of the Paid Family and Medical Leave Act. STBTC→**An employer shall not recover, or seek to recover, any amounts assessed against employers under this subsection from the employer's employees.**←STBTC

D. Beginning January 1, 2025 and for each calendar quarter thereafter until January 1, 2028, there is assessed against each self-employed individual as described in Paragraph (3) of Subsection A of this section one-half percent of the individual's net income as designated by the self-employed individual. Beginning January 1, 2028 and for each calendar quarter thereafter, there is assessed against each self-employed individual as described in Paragraph (3) Subsection A of this section an assessment on the individual's net income as designated by the self-employed individual at fifty-five

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

percent of the premium set by the secretary under Subsection D of Section 3 of the Paid Family and Medical Leave Act.

E. The contributions of employees and employers shall be remitted by the employer following the end of each quarter for which the contributions are deducted and on a date determined by the secretary.

F. The contributions of self-employed individuals shall be remitted by the individual following each end of the quarter for which the contributions are deducted and on a date determined by the secretary. A self-employed individual shall not be required to make contributions ~~STBTC~~ to the fund ~~STBTC~~ from leave compensation.

G. An employer that has adopted and operates a paid family and medical leave plan or program for the benefit of its employees that provides leave and leave compensation ~~SFC~~ equal ~~SFC~~ ~~SFC~~ substantially similar ~~SFC~~ to or greater than the leave and leave compensation offered under the Paid Family and Medical Leave Act may apply for a waiver to exempt the employer and its employees from participating in the paid family and medical leave program. The employer shall apply and provide supporting documentation to the department for exemption each calendar year.

H. An employer granted a waiver pursuant to Subsection G of this section and the employer's employees shall have the same rights and protections enjoyed by employers and employees covered under the Paid Family and Medical Leave

undescored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Act, including the right to appeal a waiver granted or denied by Subsection G of this section to the department.

I. An employer granted a waiver pursuant to Subsection G of this section shall notify all employees covered by the employer's paid leave program that:

(1) the employee is covered by a privately run leave program rather than a public plan;

(2) employees may apply to the employer for leave;

(3) employers must provide leave and leave compensation SFC→equal←SFC SFC→substantially similar←SFC to or greater than that granted to employees under the Paid Family and Medical Leave Act; and

(4) employees may appeal to the department if any right granted under the Paid Family and Medical Leave Act is violated.

J. A paid family and medical leave plan that is privately operated, as described in Subsection G of this section, shall not:

(1) require an employee to pay more for private coverage than the employee would pay through contribution to the fund as described in Subsection B of this section; or

(2) impose additional restrictions or conditions on leave or leave compensation beyond those explicitly authorized by state law.

underscoring material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

K. The department shall withdraw approval of a waiver for a privately operated paid leave plan or program that violates the provisions of Subsections G through J of this section.

L. Nothing in this section shall be construed to prohibit an employer without a waiver from providing supplemental leave compensation or extended length of leave to employees receiving compensation from the department.

SECTION 5. [NEW MATERIAL] ELIGIBILITY--LEAVE COMPENSATION CALCULATION--LEAVE DURATION--DOCUMENTATION REQUIRED--NOTICE OF DETERMINATION.--

A. Beginning January 1, 2026, the department shall provide leave compensation to an eligible employee who takes leave after the employee, in accordance with the provisions of the Paid Family and Medical Leave Act and department rules, has:

(1) filed a claim for leave compensation approved by the department;

(2) certified that the employee will not obtain new employment or enter into any new independent contractor agreements during the time the employee receives leave compensation pursuant to the Paid Family and Medical Leave Act, except with regard to intermittent leave; and

(3) contributed to the fund for at least six months during any employment in the twelve-month period prior to submitting an application.

underscored material = new

[bracketed material] = delete

Amendments: new = → bold, blue, highlight ←

delete = → bold, red, highlight, strikethrough ←

B. Beginning January 1, 2026, the department shall provide leave compensation to an eligible self-employed individual after the self-employed individual, in accordance with the provisions of the Paid Family and Medical Leave Act and department rules, has:

(1) filed a claim for leave compensation approved by the department;

(2) certified that the self-employed individual will not commence new employment or enter into new independent contractor agreements related to work performed by the individual during the time the self-employed individual receives leave compensation pursuant to the Paid Family and Medical Leave Act, except with regard to intermittent leave; and

(3) contributed to the fund for at least six months during the twelve-month period prior to submitting an application, not including contributions made for other employment that the self-employed individual will continue during the leave.

C. An employee or self-employed individual is eligible for a maximum of twelve weeks of leave compensation during any twelve-month period; provided that an employee or self-employed individual may receive leave compensation for leave taken intermittently and is not required to use twelve weeks of leave at any one time.

D. An employee or self-employed individual may

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

receive leave compensation for intermittent leave in increments of no fewer than SFC→four←SFC SFC→eight←SFC hours.

E. An employee or self-employed individual shall be ineligible to receive leave compensation if:

(1) the employee or self-employed individual files a fraudulent claim for leave or has filed a fraudulent claim for leave within the previous three years;

(2) the employee or self-employed individual is receiving unemployment insurance benefits during the period for which the claim for leave is filed; or

(3) during leave, the employee or self-employed individual does not provide the care or use leave as described in the employee's application for leave.

F. The department shall issue leave compensation from the fund to an eligible employee whose claim has been approved as follows:

(1) the calculation of weekly leave compensation shall be based on the employee's average weekly wages during the twelve months immediately preceding the date of the claim for leave. For the purposes of this paragraph, the "employee's average weekly wages" means an amount calculated by the department by dividing the total wages earned by an eligible employee during the previous twelve months by the number of weeks worked during the previous twelve months. If the employee worked fewer than twelve months, then weekly leave compensation shall be based on the employee's average

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

weekly wages during the weeks the employee worked;

(2) an eligible employee's weekly leave compensation shall equal one hundred percent of the compensation that would be paid to a non-tipped, state-minimum-wage-earning employee, pursuant to Section 50-4-22 NMSA 1978, working the same number of hours per week as the employee, plus sixty-seven percent of the employee's average STBTC→wages per week←STBTC STBTC→weekly wages←STBTC greater than the non-tipped, state minimum wage compensation; and

(3) the maximum amount of weekly leave compensation shall be no more than the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two.

G. The department shall issue leave compensation from the fund to self-employed individuals as follows:

(1) a self-employed individual shall determine the annual net income to be used by the department when the self-employed individual enrolls in the paid family and medical leave program. A self-employed individual may adjust the individual's annual net income one time per year on the anniversary of the individual's enrollment;

(2) the calculation of weekly leave compensation shall be based on the self-employed individual's designated annual net income;

.223784.6AIC February 14, 2023 (8:55am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(3) a self-employed individual's weekly leave compensation shall equal one hundred percent of the compensation that would be paid to a state-minimum-wage-earning employee, pursuant to Section 50-4-22 NMSA 1978, working full time each week, plus sixty-seven percent of the self-employed individual's net income per week greater than the state minimum wage compensation; and

(4) the maximum amount of weekly leave compensation shall be no more than the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two.

H. When an employee, self-employed individual or authorized representative submits a claim for leave compensation, the employee or self-employed individual shall provide the department with:

(1) if the applicant is an employee, a record of total STBTC→earnings←STBTC STBTC→wages←STBTC , the total number of weeks worked and the average number of hours worked per week during the previous twelve months in the employment from which the employee seeks leave; or

(2) if the applicant is a self-employed individual, documentation that the individual's business operated and earned net income from self-employment during the previous twelve months.

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

I. The department shall notify the employer and employee or self-employed individual in writing within ten business days of application:

(1) if approved, and shall notify the employee or self-employed individual of the amount of leave compensation that the employee or self-employed individual is eligible to receive biweekly; provided that an eligible employee or self-employed individual shall begin receiving leave compensation within ten business days of the date of submission of a properly completed application or ten business days after approved leave begins;

(2) if denied, and shall notify the employee or self-employed individual of the grounds for denying the employee's or self-employed individual's application for eligibility and of the employee's or self-employed individual's right to appeal; and

(3) if further information or supporting documentation is required to determine the employee's or self-employed individual's eligibility for paid leave or the amount of leave compensation; provided that when the department receives sufficient information or supporting documentation from the employee or self-employed individual to make an eligibility determination, the department shall adhere to the notification provision of this subsection.

J. Every individual filing a new claim for leave compensation shall, at the time of filing such claim, be

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

advised in writing that:

- (1) leave compensation may be subject to federal and state income taxes;
- (2) requirements exist pertaining to estimated tax payments;
- (3) the individual may elect to have federal income tax deducted and withheld from the individual's leave compensation payments at the amount specified in the Internal Revenue Code of 1986; and
- (4) the individual is permitted to change a previously elected withholding status one time during each benefit year.

K. Amounts deducted and withheld from leave compensation shall remain in the fund until transferred to the federal internal revenue service.

L. The department shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

**SECTION 6. [NEW MATERIAL] CLAIMS FOR LEAVE--
DOCUMENTATION--CONFIDENTIALITY.--**

A. The department shall require an employee or self-employed individual who seeks family leave compensation to provide, in accordance with department rules, evidence of the birth or adoption of a child or placement of a foster child with the employee or verification by a health care provider

.223784.6AIC February 14, 2023 (8:55am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

that a family member has a serious health condition that supports the employee's or self-employed individual's claim for leave compensation.

B. The department shall require an employee or self-employed individual who seeks medical leave compensation to provide, in accordance with department rules, verification by a health care provider that the employee or self-employed individual has a serious health condition that supports the employee's or self-employed individual's claim for leave compensation.

C. The department shall require an employee or self-employed individual who seeks safe leave compensation to provide, in accordance with department rules, a police report, a court-issued document or a signed statement from a victim services organization, a clergy member, an attorney, an advocate, the employee or self-employed individual, a family member of the employee or self-employed individual or other person that supports the employee's or self-employed individual's claim for leave compensation.

D. Information contained in an employee's or self-employed individual's files and records pertaining to the Paid Family and Medical Leave Act are confidential and not open to public inspection, other than to department employees in the performance of their official duties. However, the employee, the self-employed individual or an authorized representative of either may review the records or receive specific information

.223784.6AIC February 14, 2023 (8:55am)

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

from the records upon the presentation of the employee's or self-employed individual's signed authorization.

E. Employee information gathered by a private employer pursuant to the Paid Family and Medical Leave Act shall be kept confidential by the employer; provided that confidential records may be used by department employees in the performance of their duties.

**SECTION 7. [NEW MATERIAL] EMPLOYEE NOTICE TO EMPLOYER--
REDUCTION OF OTHER LEAVE PROHIBITED.--**

A. Beginning January 1, 2026, an employer shall allow an employee to take up to a combined total of twelve weeks of family leave, medical leave and safe leave during any twelve-month period. An employee may take leave intermittently in increments of no fewer than SFC→four←SFC SFC→eight←SFC hours and is not required to use twelve weeks of leave at any one time.

B. An employee shall:

(1) make a reasonable effort to schedule leave so as not to unduly disrupt the operations of the employer;

(2) provide the employer with prior notice of the schedule on which the employee will be taking leave, to the extent practicable; and

(3) provide the employer with STBTC→a copy of
~~the employee's application for leave~~←STBTC STBTC→documentation
of the approved leave compensation request pursuant to
department rules←STBTC .

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

C. The employer has the right to appeal determination to the department within thirty calendar days after receipt of the employee's application for leave.

D. STBTC→~~Leave taken shall not result in a reduction of the total amount of leave to which an employee is entitled in excess of the amount of leave actually taken~~←STBTC
STBTC→Leave taken pursuant to the Paid Family and Medical Leave Act shall not result in a reduction of the total amount of leave to which an employee is otherwise entitled pursuant to contract, policy, collective bargaining agreement or other law or rule in excess of the amount of leave actually taken pursuant to the Paid Family and Medical Leave Act←STBTC ;
provided that an employer subject to the federal Family and Medical Leave Act of 1993 may require an employee who takes leave and receives leave compensation under the Paid Family and Medical Leave Act that also qualifies for leave under the federal Family and Medical Leave Act of 1993 to take leave concurrently. STBTC→An employer shall not require an employee to exhaust any other leave entitlement prior to granting leave pursuant to the Paid Family and Medical Leave Act.←STBTC

E. Nothing in this section shall be construed to entitle an employee to more leave than required pursuant to Section 5 of the Paid Family and Medical Leave Act.

F. An employer shall post and keep posted in a conspicuous place upon its premises a notice that informs

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

employees of the right to take leave and summarizes the major provisions of the Paid Family and Medical Leave Act.

SECTION 8. [NEW MATERIAL] RETURN TO EMPLOYMENT.--

A. A self-employed individual shall notify the department within ten business days of the self-employed individual's return to work.

B. Upon an employee's return after leave SFC→or upon completion of an intermittent leave claim←SFC , an employer shall notify the department that the employee has returned to work within ten business days.

C. An employer that has employed an employee for ninety days or more STBTC→,←STBTC prior to the commencement of an employee's leave STBTC→,←STBTC shall:

(1) restore the employee to the position held by the employee when the leave was commenced; or

(2) place the employee in a position for which employee benefits, wages or other terms and conditions of employment are equivalent to or greater than those provided in the position from which the employee took leave.

D. Nothing in this section shall be construed to entitle a restored employee to:

(1) the accrual of seniority or employment benefits during the period the employee is using leave; or

(2) the right to any benefit or position of employment other than the right the employee would have been entitled to had the employee not taken the leave.

underscoring material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

E. Any yearly certification or training that an employer requires as a condition of employment may remain in place and applicable to any employee taking leave; provided that nothing in this subsection shall supersede another provision of law or a collective bargaining agreement that governs an employee's return to work after leave.

F. Nothing in this section shall prohibit an employer from requiring an employee who uses leave to report periodically to the employer on the status and intention of the employee to return to work.

G. An employer shall pay its share of health insurance premiums and maintain an employee's health coverage while the employee is on leave pursuant to the Paid Family and Medical Leave Act under terms that the employee would have received if the employee had not taken leave. The employee on leave shall pay the same share of premium payments as the employee would have paid if the employee were not on leave.

SECTION 9. [NEW MATERIAL] INTERFERENCE AND RETALIATION PROHIBITED.--

A. It is unlawful for an employer or any other person to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right protected under the Paid Family and Medical Leave Act.

B. An employer shall timely provide to the employee documents required to apply for leave.

C. An employer, employee organization or other

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

person shall not take retaliatory personnel action or otherwise discriminate against a person because the person exercised rights protected under the Paid Family and Medical Leave Act. Such rights include:

(1) requesting, filing for, applying for or exercising any right to take leave as provided for under the Paid Family and Medical Leave Act;

(2) communicating to the employer or any other person or entity an intent to file a claim, a complaint with the department or courts or an appeal;

(3) testifying, planning to testify or assisting at any time in any investigation, hearing or proceeding under the Paid Family and Medical Leave Act;

(4) informing any person about an employer's alleged violation of the Paid Family and Medical Leave Act; and

(5) informing any person of the person's rights under the Paid Family and Medical Leave Act.

D. It is unlawful for an employer's absence policy to count leave taken under the Paid Family and Medical Leave Act as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.

E. The protections provided in this section shall apply to any person who reasonably but mistakenly, alleges violations of the Paid Family and Medical Leave Act.

F. An employer that is found by a hearing officer or court of competent jurisdiction to have discharged a worker

in violation of this section shall rehire that employee;
provided that the worker agrees to be rehired.

**SECTION 10. [NEW MATERIAL] ADVERSE DETERMINATIONS--APPEAL
PROCEDURES--ADMINISTRATIVE ACTIONS--DEPARTMENTAL DISCIPLINARY
POWERS.--**

A. An employee, a self-employed individual or
authorized representative named in an application for leave may
appeal an adverse determination of that application to the
department as follows:

(1) the aggrieved party shall:

(a) file an appeal in writing with the
department within fifteen business days of receiving notice of
the adverse decision;

(b) set forth the reasons for appeal;
and

(c) provide notice to all parties that
an appeal has been filed; and

(2) the secretary or authorized representative
may:

(a) hold a hearing within ten business
days after an appeal is properly made, due notice is given to
the parties in dispute and mediation is refused by any party;

(b) develop a record of the proceedings;
and

(c) rule on the appeal within five
business days after the completion of the hearing and issue a

.223784.6AIC February 14, 2023 (8:55am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

final decision in accordance with Subsection B of Section 39-3-1.1 NMSA 1978.

B. An aggrieved party, including an employee or former employee, or the department on its own motion may bring an administrative action for an alleged violation of the Paid Family and Medical Leave Act under a public or privately run leave program as follows:

(1) the aggrieved party or the department shall:

(a) file a complaint ~~STBTC~~→with the department←STBTC alleging a violation of the Paid Family and Medical Leave Act in writing with the department within thirty business days of becoming aware of the alleged violation;

(b) set forth the grounds of the complaint; and

(c) provide notice to parties to the alleged violation that a complaint has been filed; and

(2) the secretary or authorized representative shall:

(a) upon receipt of a complaint alleging a violation, first allow for mediation upon agreement by all parties;

(b) hold a hearing within ten business days after a complaint is properly made, due notice is given to the parties in dispute and mediation is refused by any party;

(c) develop a record of the proceedings;

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(d) have power to take disciplinary action, including investigating, fining, censuring or reprimanding a party or suspending or revoking a waiver issued pursuant to the Paid Family and Medical Leave Act; and

(e) rule on a complaint within five business days after the completion of the hearing and issue a final decision in accordance with Subsection B of Section 39-3-1.1 NMSA 1978.

C. A party may appeal a final decision made by the department pursuant to the provisions of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

D. The department may appear in its own name in district court in actions for injunctive relief to prevent any person or entity from violating the provisions of the Paid Family and Medical Leave Act or rules promulgated by the department.

SECTION 11. [NEW MATERIAL] PREEMPTION.--

A. A city, county, home rule municipality or other political subdivision of the state shall not adopt or continue in effect any ordinance, rule, regulation resolution or statute that establishes a program of rights and benefits as set out in the Paid Family and Medical Leave Act, excluding a paid sick leave or paid time-off ordinance, policy or resolution.

B. Subject to the requirements of the Paid Family and Medical Leave Act, the provisions of Subsection A of this section shall not prevent a city, county, home rule

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

municipality or other political subdivision of the state from establishing any leave policies for its employees.

SECTION 12. [NEW MATERIAL] COLLECTIVE BARGAINING AGREEMENTS UNAFFECTED.--Nothing in the Paid Family and Medical Leave Act shall be construed to diminish the rights, privileges or remedies of any employee under any collective bargaining agreement.

SECTION 13. [NEW MATERIAL] DEPARTMENT TO PROMULGATE RULES--AGENCIES AND DEPARTMENTS TO COOPERATE.--

A. By July 1, 2024, the department shall adopt and promulgate rules to implement the provisions of the Paid Family and Medical Leave Act.

B. State agencies and departments shall cooperate with the secretary to timely and efficiently provide the information and services necessary to carry out the provisions of the Paid Family and Medical Leave Act.

SECTION 14. TEMPORARY PROVISION--PAID FAMILY AND MEDICAL LEAVE IMPLEMENTATION ADVISORY COMMITTEE--CREATED--PURPOSE-- MEMBERS.--

A. The "paid family and medical leave implementation advisory committee" is created in the workforce solutions department. The advisory committee consists of STBTC→thirteen←STBTC STBTC→fifteen←STBTC members appointed by the secretary of workforce solutions. Members of the advisory committee include:

- (1) a representative of a nonprofit

underscoring material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

organization that advocates for women and girls;

(2) a representative of an organization that advocates for individuals fifty years of age or older;

(3) a representative of a statewide chamber of commerce;

(4) two representatives of a small business development center advisory council;

(5) a representative of a medical society with expertise in the care of children;

(6) a member representing the parents of newborn children;

(7) a member representing adoptive and foster parents;

(8) a member representing unpaid family caregivers;

(9) the director of the commission on the status of women;

(10) a representative of a university-based bureau of business and economic research;

(11) a representative of an organization with expertise in chronic illnesses; ~~STBTC~~ → and ← ~~STBTC~~

(12) a representative of an organization with expertise in disabilities ~~STBTC~~ → ; and

(13) two representatives of a statewide organization representing labor ← ~~STBTC~~ .

B. The paid family and medical leave implementation

.223784.6AIC February 14, 2023 (8:55am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

advisory committee shall provide input regarding best practices for the efficient and timely development, implementation and promulgation of rules and educational materials to carry out the provisions of the Paid Family and Medical Leave Act.

C. The secretary of workforce solutions shall consult with the paid family and medical leave implementation advisory committee at least quarterly as rules are developed to implement a program pursuant to the Paid Family and Medical Leave Act.

D. Members of the paid family and medical leave implementation advisory committee are not entitled to per diem and mileage expenses. The workforce solutions department shall provide staff for the committee.

E. The paid family and medical leave implementation advisory committee shall function from the date of its appointment, which shall be no later than October 1, 2023, until January 1, 2025.

SECTION 15. TEMPORARY PROVISION--REPAYMENT OF APPROPRIATION.--Beginning January 1, 2026, six million dollars (\$6,000,000) shall be transferred from the paid family and medical leave fund at the end of each fiscal year to the general fund until the total transfers pursuant to this section equal the total amount of an appropriation made to the workforce solutions department in the 2023 legislative session.

SECTION 16. APPROPRIATION.--Thirty-six million five hundred thousand dollars (\$36,500,000) is appropriated from the

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

general fund to the workforce solutions department for expenditure in fiscal years 2024 and 2025 for administrative costs associated with the implementation of the Paid Family and Medical Leave Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2025 shall revert to the general fund.

- 31 -