


NEW MEXICO'S HEALTHY WORKPLACES ACT: *Complying With the Paid Sick Leave Requirement*

9 June 2022



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- HB20 and Compliance
- Qualifying Reasons for Leave under HB20
- Employer Documentation and Prohibition under HB20
- Next Steps under the Act and DWS Proposed Regulations
- Employer Options for Implementing a Paid Sick Leave Program that Complies with the NMHWA
- Questions and Answers

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Healthy Workplaces Act

- Signed into law by Governor Lujan Grisham, on April 8, 2021.
- Requires **all private employers** to provide paid leave to employees that can be used for sick time, to care for or assist family members, or other reasons for themselves.
- The law will become effective on July 1, 2022.
- Final rules/regulations will be issued by the NMDWS on June 27, 2022.

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Who is Covered?

- All private employers in New Mexico, regardless of size, are covered. This includes corporations and other business organizations as well as individuals such as company owners, managers, and supervisors.
- Under the law, all private sector employers with at least one employee must allow employees, **including part-time, seasonal, and temporary workers** to accrue earned sick leave at a rate of *one hour for every 30 hours worked*.¹
 - **No waiting period for accrual, or for using earned paid sick leave!**
- Earned sick leave must be paid at the employee's regular hourly rate.²
- Employees exempt from overtime requirements under FLSA are assumed to work forty hours in each work week for the purposes of earned sick leave accrual unless their normal work week is less than forty hours, in which case earned sick leave accrues based on their normal work week.

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Who is NOT Covered?

- Anyone performing services for an employer outside the state of New Mexico.
- Anyone performing services on tribal land.
- Independent contractors.
- Any employee of an employer subject to Title II of the federal Railway Labor Act.
- An employee as defined in the federal Railroad Unemployment Insurance Act or the Federal Employers' Liability Act.
- Employees of the United States or the state of New Mexico or its cities, counties, and agencies

Accrual and Use

- Accrual begins on the first day of employment or the effective date of the Act (July 1, 2022), whichever is later.³
- Employees may use earned sick leave as it accrues.

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Healthy Workplaces Act

Accrual and Use

- Employees may use up to 64 hours of earned sick leave in a 12-month period.⁴
- Employees may carry over any accrued, unused earned sick leave. However, "an employer is not required to permit an employee to use more than 64 hours in a 12-month period."⁵
- Employers may determine the 12-month period in which leave may be used⁶:
 - (a) calendar year
 - (b) any fixed 12-month leave year
 - (c) 12-month period measured forward from the date an employee first uses leave; or
 - (d) rolling 12-month period measured backward from the date an employee uses any leave.

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Healthy Workplaces Act

Accrual and Use

- Employers are permitted to frontload earned sick leave by granting the full 64 hours to employees on January 1 of each year (or a prorated amount for employees who begin employment after January 1).⁷
 - Starting July 1, 2022, employers choosing to frontload still need to frontload the full 64 hours instead of 36.
- Employees may use earned sick leave "in the smaller of hourly increments or the smallest increment that the employer's payroll system uses" for other absences.⁸
- The Act does not require employers to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement or other separation from employment for accrued earned sick leave that has not been used.⁹

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Healthy Workplaces Act

Accrual and Use

- If an employee is transferred to a separate division, entity or location but remains employed by the same employer, the employee is entitled to all earned sick leave accrued at the prior division.¹⁰
- Additionally, when the employee has been separated from employment but has later been rehired within 12 months of separation by the same employer, previously accrued earned sick leave must be reinstated.¹¹
 - Must be ALL hours that remained in their earned sick leave bank at the time they resigned.



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Accrual and Use

- In cases where a different employer succeeds or takes the place of an existing employer, all the employees of the original employer who remain employed by the successor employer are entitled to all earned sick leave accrued when employed by the original employer and are entitled to use all earned sick leave previously accrued.¹²



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Employers with More Generous Policies

- If an employer has a PTO policy that is at least as generous as the HWA, then the employer does not need to offer additional earned sick leave if the PTO policy provides “an amount sufficient to meet the accrual requirements of the Act and that may be used for at minimum the same purposes and under the same terms and conditions.”¹³
- The sick leave required under the Act is “in addition to any paid time off provided by an employer pursuant to a collective bargaining agreement unless that paid time off provided may be used for the same purposes and under the same terms and conditions as the Act.”¹⁴

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Covered Employees and Family Members



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Family member is defined broadly to include:

- an employee's spouse or domestic partner;
- a person related to an employee or an employee's spouse or domestic partner as a biological, adopted, or foster child, a stepchild or legal ward, or 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 or 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.

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Qualifying Reasons for Leave¹⁶

- An employee may use sick leave for his or her own:
 - (a) mental or physical illness, injury or health condition;
 - (b) medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or
 - (c) preventive medical care”;
- The employee's need to care for a family member's:
 - (a) mental or physical illness, injury or health condition;
 - (b) medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or
 - (a) preventive medical care”;

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Qualifying Reasons for Leave (Cont.)

- Meetings at a child's school or place of care related to the child's health or disability
- Absences due to domestic abuse, sexual assault or stalking suffered by the employee or family member of the employee, provided that the leave is to:
 - Obtain medical or psychological treatment or other counseling;
 - Relocate;
 - Prepare for or participate in legal proceedings; or
 - Obtain services or assist a family member of the employee with any of the activities previously mentioned.

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Employee Notice

- Earned sick leave should be provided upon the written or oral request of an employee or an individual acting on the employee's behalf. The request should include the expected duration of the sick leave absence when possible.¹⁷
- When the use of earned sick leave is foreseeable, the employee shall make a reasonable effort to provide oral or written notice of the need for leave to the employer in advance of the use of the earned sick leave.¹⁸
- The employee should make a reasonable effort to schedule the use of earned sick leave in a manner that does not **unduly disrupt** the operations of the employer.¹⁹
- When the use of earned paid sick time is not foreseeable, the employee should notify the employer orally or in writing as soon **as practicable**.

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What is "foreseeable?"

- Foreseeable means that an employee is aware of the need to use earned sick leave seven or more days before such use.²⁰



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Employee Notice

- Documentation is not required for sick leave, but employers may require employees to provide reasonable documentation showing that the earned sick leave was used for one of the qualifying reasons when there are earned sick leave absences of two or more consecutive work days.²¹
- Documentation signed by a healthcare professional indicating the amount of earned sick leave taken is necessary is considered reasonable documentation for sick leave taken pursuant to the Act.²²

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Employee Notice

- In cases of domestic abuse, sexual assault or stalking, an employee may also provide²³:
 - Police report,
 - court-issued document or a signed statement from a victim services organization,
 - Clergy member, attorney, advocate, the employee, a family member of the employee or other person affirming that the sick leave was taken for one of the purposes set under the Act.
- The signed statement may be written in the employee's native language and shall not be required to be in a particular format or notarized.
- An employer cannot require the documentation to explain the nature of any medical condition or the details of the domestic abuse, sexual assault or stalking.

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Healthy Workplaces Act

Employee Notice

- While an employee shall provide documentation upon request to the employer in a timely manner, the employer cannot delay earned sick leave on the basis that the employer has not yet received documentation.²⁴
- All information obtained by an employer related to an employee's reasons for taking sick leave shall be treated as confidential and not disclosed except with the permission of the employee or as necessary for validation purposes for insurance disability claims, accommodations consistent with the ADA, as required by the HWA or by court order.²⁵

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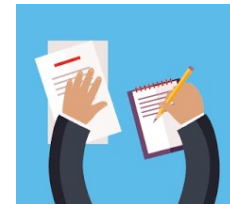
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Employer Documentation

- Employers must retain records for the immediately preceding 48-month period documenting hours worked and leave taken by employees.²⁶
- The HWA requires employers to notify employees of their rights under the new law by displaying a poster in the workplace and providing a notice to employees upon hire.



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Healthy Workplaces Act

Employer Documentation

- An employer must give written or electronic notice to an employee at the commencement of employment of the following²⁷:
 - The employee's right to earned sick leave;
 - The manner in which sick leave is accrued and calculated;
 - The terms of the use of earned sick leave as guaranteed by the HWA;
 - That retaliation against employees for the use of sick leave is prohibited;
 - The employee's right to file a complaint with the division if earned sick leave as required pursuant to the HWA is denied by the employer or if the employee is retaliated against; and
 - All means of enforcing violations of the HWA.

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Employer Documentation

- Notice required must be in English, Spanish or any language that is the first language spoken by at least ten percent of the employer's workforce, as requested by the employee.²⁸

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Prohibitions

- An employer cannot require that the employee search for or find a replacement worker to cover the hours during which the employee is using earned sick leave as a condition of an employee's taking sick leave.²⁹
- An employer cannot require that an employee use other paid leave before the employee uses sick leave pursuant to the Healthy Workplaces Act.³⁰
- All the information received by the employer in connection with the employee's reasons for obtaining sick leave is to be treated as confidential.³¹

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Healthy Workplaces Act

Prohibitions (Cont.)

- An employer's failure to provide earned sick leave based on the employer's misclassification of the employee as an independent contractor is a violation of the Act.³²
- Employees who do not have a legal presence in the U.S. may file an action for violation of the HWA, and employers are barred from using their legal status as a defense.³³

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Healthy Workplaces Act

Prohibitions (Cont.)

- Anti-retaliation policies³⁴
- An employer may not take or threaten any adverse action whatsoever against an employee:
 - That is reasonably likely to deter such employee from exercising or attempting to exercise a right granted pursuant to the HWA; or
 - Because the employee:
 - Has exercised or attempted to exercise such rights;
 - Has reasonably alleged violations of the HWA; or
 - Has raised a concern about violations of the HWA to the employer, the employer's agent, other employees, a government agency or to the public through print, online, social or any other media.

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Healthy Workplaces Act

Prohibitions (Cont.)

- An employer may not attempt to require an employee to sign a contract or other agreement that would limit or prevent the employee from asserting rights provided for in the HWA or to otherwise establish a workplace policy that would limit or prevent the exercise of such rights.³⁵
- An employer may not count the use of sick leave in a way that will lead to discipline, discharge, demotion, non-promotion, less favorable scheduling, reduction of hours, suspension or any other adverse action.³⁶

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Violations

- Aggrieved employees are entitled to file a civil action in court for a violation of the HWA within three years from the date the violation occurred.³⁷
- A civil action to enforce any provision of the HWA may be filed without first filing an administrative complaint with the division and may³⁸:
 - Encompass all violations that occurred after the effective date of the HWA as part of continuing course of conduct, regardless of the date on which the violations occurred;
 - Be pursued by an employee on behalf of the employee or be pursued by an employee on behalf of other employees similarly situated; or
 - Be pursued by an agent or representative designated by an employee.

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Healthy Workplaces Act

Employer Liability

- An employer that violates the HWA is liable to the affected employee³⁹:
 - For an instance of sick leave taken by an employee but unlawfully not compensated by the employer, in an amount equal to three times the wages that should have been paid or five hundred dollars (\$500), whichever is greater;
 - For an instance of sick leave requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned on searching for or finding a replacement worker, in an amount equal to actual damages or five hundred dollars (\$500), whichever is greater;
 - For each instance of retaliation prohibited by the HWA excepting discharge from employment, in an amount equal to actual damages, including back pay, wages or benefits lost, an additional amount of two hundred fifty dollars (\$250) and equitable relief such as rescission of disciplinary measures taken by the employer or other relief as determined by a court of law;

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Employer Liability (Cont.)

- For each instance of prohibited discharge from employment, in an amount equal to actual damages, including back pay, wages or benefits lost, an additional amount of five hundred dollars (\$500) and reinstatement or other equitable relief as determined by a court of law;
- For each willful notice or recordkeeping violation, two hundred fifty dollars (\$250); and
- For each misclassification of an employee as an independent contractor, actual damages or five hundred dollars (\$500), whichever is greater.

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Healthy Workplaces Act

Next Steps

- Employers should review their existing Paid Time Off policies to ensure compliance with the new law once it takes effect in July.
- Employers need to make decisions about a number of things before revising their policies and practices, including but not limited to:
 - What "year" will you use" (Calendar, Other Fixed, Rolling Calendar – "look forward")
 - Combined Paid Time Off Leave Bank
 - Split paid Vacation and Sick Leave Banks
 - Accrual or "Frontloading" method of providing sick leave
- The Department of Workforce Solutions has recently released proposed regulations to the law. The current regulations mainly focus on enforcement and only provides clarification in a few areas.
 - The business community has submitted their proposed changes to the regulations.

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Current Regulations

- Provide clarification on some definitions:
 - “Frontloading”: when an employer elects to grant employees earned sick leave prior to the employee accruing it.
 - “Calendar year”: means January 1st of any year through December 31st of that same year.
 - “Foreseeable”: means an employee is aware of the need to use earned sick leave seven or more days before such use.

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Current Regulations

- Clarification on accrual and usage under the Act:
 - An employer may voluntarily frontload earned sick leave to an employee; however, the employer **may not recoup** the frontloaded leave through payroll deductions even if the employee signs a written agreement authorizing the employer to do so or if the employee is separated before accruing the frontloaded leave.
 - Hours worked in excess of 40 hours per seven-day work week do not accrue earned sick leave at a rate greater than one hour of earned sick leave for every 30 hours worked unless an employer has chosen a higher accrual rate for its employees or if required under the terms of any applicable collective bargaining agreement.
 - An employer cannot deem an employee's hours to be “cut” to a lower number due to taking earned sick leave. The employer must pay the employee all earned sick leave according to the employee's regularly scheduled hours. If the number of hours that the employee works fluctuate from week to week, the employer shall use the average number of hours worked by the employee during the preceding two weeks when paying earned sick leave.

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Current Regulations

- Employers shall retain records documenting hours worked by employees, sick leave accrued or earned by employees and earned sick leave taken by employees. All records shall be maintained for a minimum of 48 months. Employers shall produce these records for inspection upon request by the division.
- Tipped Employees: Employees who are ordinarily paid less than the full minimum wage due to a “tip credit” must receive the full state or local minimum wage (whichever is greater) when using earned sick leave.
- Salaried Employees: When using earned sick leave, salaried employees must receive their regular salary converted to an hourly rate based on the employee's regular work week and weekly salary amount.

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Current Regulations

- Employees paid on task, piece or commission basis must receive the greater of their hourly or salary rate or the state or local minimum wage
- If an employer requires an employee to provide documentation when the employee's use of earned sick leave results in an absence of two or more consecutive workdays, the employee shall be allowed up to fourteen (14) days from the date they return to work to provide such documentation.
 - NOTE: Under the FMLA, employees have 15 days to return medical certification documents; if you are an FMLA-covered employer, you may consider using the 15 days for HWA to be consistent administratively.

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Current Regulations

• Notice by Employers:

- Employers shall give written or electronic notice to an employee at the commencement of employment of the employee's rights to earned sick leave; the manner in which sick leave is accrued and calculated; the terms of use of earned sick leave as guaranteed by the Healthy Workplaces Act; that retaliation against employees for using sick leave is prohibited; etc.
- Employers shall display a poster that contains the information required in Section A, above, in a conspicuous and accessible place in each establishment where employees are employed. The poster should be in English, Spanish and in any language that is the first language spoken by at least ten percent of the employer's workforce.

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Healthy Workplaces Act: Business Community's Proposed Changes to the Law

- A coalition of business groups has released a redlined version of HB20 which includes their proposed changes and amendments to the law.
- This version of the law includes clarification not only on the enforcement of the law, but to definitions, use and accrual, employer liability, as well as how the law applies to employers with more generous paid time off policies.
- Unfortunately, these proposed changes and amendments will not go into effect as no bill was introduced in this legislative session. The law will go into effect in July as is.

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Guide to New Mexico's Paid Sick Leave Law

- The Department of Workforce Solutions released A Guide to New Mexico's Paid Sick Leave Law in April 2022.
- The Guide provides clarification on several areas of the law including enforcement, accrual, employer notice and record-keeping requirements, employee notice to employer, usage, and when documentation is required.

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Guide to New Mexico's Paid Sick Leave Law

Usage

- **No Waiting Period:** As soon as an employee accrues sick leave, or if an employer grants the employee leave in advance of the employee accruing it, the employee may use it immediately.
- **Timely Payment Required:** Employers must pay earned sick leave on the same scheduled payday as regular wages.
- **Yearly Usage Limits:** Employees may use up to 64 hours of earned sick leave per 12-month period. An employer may increase this limit, but 64 hours is the minimum every employer must allow.

When Documentation is Required

- **Documentation is not required for absences of one day or less.**
- When documentation is required under the Act, **the employee is allowed up to fourteen (14) days from the date they return to work to provide the documentation.**

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Guide to New Mexico's Paid Sick Leave Law

Record-keeping Requirements

- Employers must provide with an accurate year-to-date summary, in writing, of earned sick leave accrued and used at least once every calendar quarter. This may be electronically, including by email, website, mobile application, or other reasonable method.
 - Employers will also be in compliance with this requirement if this information is provided on regularly issued pay stubs.
- Employers must keep records documenting hours worked by employees and earned sick leave taken by employees for four years.

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Guide to New Mexico's Paid Sick Leave Law - Options

Employers need to decide how to implement, and how to adjust existing paid leave policies and practices to comply with the law. Options include:

1. **Provide Earned Sick Leave Bank only** – for example, if you don't provide any paid leave currently, or if you only provide paid sick leave at this time.
2. **Combined Paid Time Off (PTO) Leave Bank** – ensuring that your PTO program meets the requirements of the NMHWA for providing and tracking paid sick leave.
3. **Separate Paid Sick Leave, and Paid Vacation Leave Banks** – many consider this to be the preferred approach.
4. **Hybrid Program of Combined PTO, and Paid Sick Leave** – different methods for different classes of employees.

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Guide to New Mexico's Paid Sick Leave Law - Approaches

For each of the four options, employers need to decide the approach to comply with the law, and evaluate the pros and cons of each:

- Accrual method
- Frontloading method
- Hybrid method – use different method for specific classes of employees (e.g. FT v. PT)

Things to consider for each paid leave option:

- Provide Earned Sick Leave Bank only
- Combined Paid Time Off (PTO) Leave Bank
- Separate Paid Sick Leave, and Paid Vacation Leave Banks
- Hybrid Program of Combined PTO, and Paid Sick Leave

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Guide to New Mexico's Paid Sick Leave Law – Other Issues

There are several other issues that you may need to consider when planning your paid leave program, so that you will be in compliance with the NMHWA, including but not limited to:

- Donated Sick Leave Banks
 - The statute appears to limit an individual's ability to donate PSL beyond leaving a minimum of 64 hours of PSL in their own earned sick leave bank.
- Evaluate the capabilities and limitations of your payroll system for tracking accrual, use, rollover, recordkeeping, etc.
 - Increments of PSL MUST be in the minimum increment that your payroll system allows
- Carefully evaluate your attendance policies regarding corrective or disciplinary action for abuse of sick leave.
 - Employee rights for using PSL are very broad
- Remember that earned but unused Vacation or PTO (Combined leave bank) hours must be paid out to the employee upon separation – no “use it or lose it”

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Frequently Asked Healthy Workplaces Act Questions

NMDWS website regularly updates its FAQ's at:
<https://www.dws.state.nm.us/NMPaidSickLeave>

Some common questions we see:

- **Is paid sick leave under the Act the same as paid time off (PTO)?**
 - Possibly. PTO is only equated with earned sick leave under the Act if it is earned on the same basis, can be used under the same conditions, and is subject to the same notice and other requirements as those specified by the Act. Otherwise, the earned sick leave required by the Act is **in addition** to any other paid time off or other leave that an employer may grant.
- **Can an employer include sick leave in their PTO plan?**
 - Employers who choose this route must ensure their PTO policy tracks the Healthy Workplaces Act requirements in every regard. For instance: it must provide the same or more generous accrual, carryover, and use benefits; employees must start accruing leave upon hire; employees must be allowed to use the PTO for all the same purposes permitted by the Act, including those related to family members; the policy must incorporate the Act's rules on recordkeeping, notice, payment for leave used, etc.

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Frequently Asked Healthy Workplaces Act Questions

- **If an employee who earns over 64 hours of paid sick leave per year leaves the company and then returns within a year, does the employer have to reinstate all unused sick leave, even if it's over 64?**
 - Yes. Whatever paid sick leave balance the employee had upon departure must be reinstated upon rehire within 12 months, even if that's more than 64. The only exception is if the employee chose to be paid out all unused hours to when they left the company. In that case, the hours were deemed "used" when cashed out upon separation and do not need to be reinstated.
- **Can an employer frontload 64 hours of paid sick leave for employees at the beginning of each year and feel confident that they are compliant with the accrual requirements of the Act?**
 - It depends on how many hours of paid sick leave the employee ends up accruing throughout the year. If they accrue the full 64 hours but then works additional hours (such as overtime), the employer will have to add sick leave hours to that employee's leave balance to be in compliance.

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Frequently Asked Healthy Workplaces Act Questions

- **If an employer has a policy that provides for more generous accrual, usage, or carryover limits than the minimums required in the Act, can they still be found in violation of the Act?**
 - Yes. The Division requires these employers to honor their own policies. The Division will enforce those more generous provisions. Employers in violation could face assessments of improperly denied leave pay, statutory damages, and interest.
- **Can employers cap paid sick leave accruals when the employee's balance reaches 64 hours?**
 - No. Employers can never cap an employee's PSL accrual. However, the New Mexico Legislature wrote the Act to permit employers to cap use at 64 hours per year. Therefore, employers who cap PSL use should be sure to notify their employees that sick leave balances may not reflect the number of hours they will be allowed to use in a given year.

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Frequently Asked Healthy Workplaces Act Questions

- **Does a collective bargaining agreement (CBA) control accrual and use of sick leave for union employees?**
 - Yes. However, the CBA requirements for accrual and use of paid sick leave must be consistent with the Act and meet the mandatory minimum requirements for accrual and usage, although they are free to grant more generous amounts of leave accrual and usage.
- **Do overtime hours need to be included in the calculation of paid sick leave accrual (1 hour of earned sick leave per 30 hours the employee works)?**
 - Yes. Hours worked in excess of 40 hours per seven-day work week accrue sick leave at the same rate as regular hours: one hour of earned sick leave per 30 hours of work.
- **Does the HWA supersede federal law, or the Bernalillo County PTO Ordinance enacted in 2020?**
 - State law, including the HWA, supersedes federal law where the protection afforded an employee under the state law offers greater protection to the employee than the federal law. Similarly, to the extent that a municipal or county ordinance provides for greater employee protections than state law, an employer must comply with the provisions most protective to employees.

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Summary and Some Other Issues of Note

- PTO – combined leave bank – be sure PTO policy tracks ALL of the provisions of the HWA – accrual, use, and carry over rate – must be able to use it for all uses under HWA
- Inform employee of rights UPON HIRE –
- If an exempt employee's normal workweek is 40 hours per week, you can use 40 hours as your default basis for calculating paid sick leave.
 - If exempt employee's normal workweek is less than 40 hours, you can use that as your basis
 - And hours truly fluctuate, look at the average for the last 2 weeks and use that as your basis
- For the rest of 2022 – starting July 1, accrual. BUT if you frontload, you have to frontload 64. The only time you can prorate the frontload is if someone starts in the middle of the year.
- Temp Agency Workers – Agency is responsible for PSL
- Leave has to be requested by the employee – it is the employee's choice as to whether to use PSL

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Summary and Some Other Issues of Note

- Communicate to employees they might have more than permitted amount of PSL to be used.
- Need not accrue fractional hours – only whole hours in multiples of 30 hours worked (including OT work)
- Cannot cap accrual – BUT must roll over up to 64 hours, and you can cap how much an employee can use during the course of a year.
- Retain SL balance – transfer, succession, if hired back within 12 months (need not be restored if it was paid out)
- If EE uses 2 or more days of PSL, employer can require a doctor's note
- Retaliation is Zero Tolerance
 - You can discipline, but be sure you can prove abuse, and defend against a retaliation claim

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Summary and Some Other Issues of Note

- Front loading MUST be a minimum of 64 hours, including for part-time employees. You STILL have to monitor hours worked, so that they may accrue hours above 64 at the accrual rate if they work enough hours
- PSL must be taken in the minimum increments that your timekeeping system will allow, and for which you allow other kinds of leave to be taken
- Commission-based only employees – use 2-week lookback method to find average number of hours worked, and use that to pay PSL
- Employers are required to give each employee written notification of sick leave accrued and used at least once per calendar quarter.
 - If employees can see their YTD accruals and time used at any time on their paystub or payroll earning statements, you don't have to provide separate quarterly reports
- If employees earn 80 hours of all-purpose PTO per year, and they use all 80 hours for vacation, but then get sick later on, then they will have no paid sick leave left. Make sure your employees are aware of this fact in advance.

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Summary and Some Other Issues of Note

- If you are using frontloading, an employee starts work, works for a week and takes 64 hours of PSL, comes back to work for a day, and then resigns. There is essentially no way that an employer can prevent this sort of abuse. NMDWS stated, "The only way to ensure this does not happen is by not frontloading."
- If an exempt employee works 40 or more hours per week, use 40 hours for accrual purposes. If they work less than 40 hours per week, use the actual number of hours they customarily and regularly work. If this is not something you currently track, you will need to start tracking it.
- Remember - ACCRUAL can never be capped, but employers can cap USE at 64 hours per year.
- A minimum of 64 hours of accrued but unused sick leave must carry over for each employee each year. If your company policy allows for it, employees can choose to sell back unused leave in excess of 64 hours
 - In this case, the Department's interpretation would be that the excess leave is no longer considered unused or subject to the carryover requirement. However, this would only apply to unused leave over 64 hours.

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NM Department of Workforce Solutions – Other Resources

- There are three remaining NMDWS informational webinars that you may still register for including:
 - [Friday, June 17, 2022, 2p.m.](#)
 - [Thursday, June 23, 2022, 12p.m.](#)
 - [Wednesday, June 29, 2022, 4p.m.](#)
- A recording of the webinar is also available on the NMDWS YouTube channel at www.youtube.com/NMDWS.
- We recommend reading the State Statute - NMSA Chapter 50, Article 17
- We also recommend reading the frequently asked paid sick leave questions available at <https://www.dws.state.nm.us/NMPaidSickLeave> that will help answer many questions that you may have.



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WHAT QUESTIONS DO YOU HAVE?



Feel free to contact the instructor(s) following the session for assistance, or if you have questions.



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Thank you.

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