

BLOG

New Mexico Paid Sick Leave Starts July 1, 2022

By Erica Honig, Compliance Director, Employee Benefits

May 10, 2022

Beginning on July 1, 2022, New Mexico will join a growing number of other states (and Washington, D.C.) requiring private employers to provide their employees with paid sick leave time. The [Healthy Workplaces Act](#) (HWA) was signed into law by New Mexico Governor Michelle Lujan Grisham on April 8, 2021 and requires employers to provide employees working in the state of New Mexico with paid sick leave time (NM PSL).



Covered Employers & Employees

All employers with at least one employee working in New Mexico are subject to HWA and must provide NM PSL to covered employees. Covered employees under the HWA include full-time, part-time, seasonal and temporary workers. Federal, state and local governmental employers are exempt from HWA requirements.

Use of Paid Sick Leave

Employees may use NM PSL for the following reasons:

1. Mental or physical illness, injury or health condition of employees or their family members¹;
2. Medical diagnosis, care or treatment of a mental or physical illness, injury or health condition of employee or family members;
3. Preventive medical care of employees or their family members;
4. Meetings at the employee's child's school or place of care related to the child's health or disability;
5. Absences due to due to domestic abuse, sexual assault or stalking suffered by the employee or a family member to:
 - a. Obtain medical, psychological or other counseling treatment
 - b. Relocate
 - c. Prepare for or participate in legal proceedings
 - d. Obtain services.

Accrual of NM PSL, Frontloading & Carryover Rules

Employees will accrue one hour of NM PSL for every 30 hours worked (including worked overtime hours), up to a maximum of 64 hours per year. Employers may choose to provide a higher maximum annual limit and may choose to frontload the full 64 hours of NM PSL for employees at the beginning of the year. Employers must permit employees to carryover any accrued, unused NM PSL from one year to the next, up to a maximum of 64 hours.

Employers may use any one of the following methods for determining the NM PSL 12-month period:

- calendar year,
- rolling 12-month period backward from the date of use,
- any fixed 12-month leave year, including one measured from the employee's first use of leave.

Employee Notice to Employer

An employee (or a representative of an employee) is required to provide verbal or written notice to their employer of a request to use NM PSL in advance of foreseeable leave or as soon as practical. Similarly, an employee must make a reasonable effort to schedule foreseeable NM PSL use in a manner that does not unduly disrupt the operations of the employer. When possible, the request must include the expected duration of the sick leave absence. Employees may use NM PSL in hourly increments or the smallest increment that the employer's payroll system permits.

Employers are prohibited from requiring an employee using NM PSL to find a replacement worker for coverage and requiring an employee to use other paid leave before using earned NM PSL.

Employee Documentation

For NM PSL that lasts two or more consecutive days, an employer may require the employee to provide reasonable documentation from a health care provider confirming that NM PSL was used for qualifying reasons.

All documentation received by an employer with respect to an employee's use of NM PSL must be treated as confidential and not be disclosed without permission, except in certain circumstances relating to disability claims or accommodations, or as required by court order.

Rate of Pay

Employees must be paid for NM PSL at their same hourly rate of pay with the same benefits, including health care benefits, that they receive when working, pursuant to applicable state or local minimum wage laws.

Payout upon Employment Termination/Reinstatement upon Rehire

Employers are not required to pay out an employee's accrued, unused NM PSL upon termination from employment. If a terminated employee is rehired within twelve months by the same employer, previously

accrued, unused NM PSL must be reinstated and available for use at the time of rehire.

Existing Paid Time Off Policies

Employers with existing policies that provide an amount of paid time off that meets or exceeds the NM PSL requirements and covered reasons under the same terms and conditions are not required to provide additional paid time off. The state provided a checklist ([accessed here](#)) detailing the requirements that an employer's existing paid time off policy must contain for compliance under the HWA. Employers are advised to cross reference this checklist against their existing paid time off policies.

Collective Bargaining Agreements

NM PSL will be provided to employees in addition to any paid time off provided by an employer under a collective bargaining agreement, unless that paid time off may be used for the same covered reasons and under the same terms and conditions as provided for in the HWA.

Employer Notice, Posting & Recordkeeping Requirements

Employers must provide written or electronic notice of NM PSL rights and responsibilities to all employees on their date of hire, including the following:

1. an employee's right to NM PSL;
2. the manner in which NM PSL is accrued and calculated;
3. the terms of NM PSL use pursuant to the HWA;
4. that retaliation against employees for NM PSL use is prohibited;
5. the employee's right to file a complaint with the state labor department if an employer denies NM PSL use or retaliates against an employee.

Employers are also required to display a poster that may be accessed [here](#) with NM PSL information in a conspicuous and accessible place. Both the notice and the poster must be provided in English, Spanish and any other language spoken by at least 10% of the workforce. Click [here](#) for the required poster in Spanish.

Employers must report accurate year-to-date usage and accrual of NM PSL either by including this information on employees' paystubs or communicating it in writing to employees at least once every calendar quarter.

Employers are required to maintain records of each employee's use of NM PSL for a period of four years, documenting hours worked and amount of NM PSL used.

Interaction with Other Local Paid Leave Laws

Employers with operations located in the unincorporated areas of Bernalillo County are advised to consult with legal counsel to ensure compliance with both NM PSL and Bernalillo County paid leave regulations, which require paid leave time for any purpose, not just those reasons covered under NM PSL.

Effective Date

The effective date of NM PSL is **July 1, 2022**. Employees hired after July 1, 2022 will begin to accrue NM PSL upon their date of hire and may use NM PSL immediately upon accrual.

Employer Actions

1. **Review/revise leave policies:** Determine if existing leave policies meet or exceed the NM PSL requirements. If not, revise leave policies to ensure compliance with NM PSL requirements under the HWA. For multistate employers, review the NM PSL requirements to ensure coordination with other applicable state and local jurisdiction paid sick leave mandates.
2. **Leave tracking and recordkeeping processes:** Ensure leave tracking and recordkeeping processes are updated for NM PSL compliance purposes, including notifying payroll company of reporting requirements.
3. **Training:** Train the Human Resources team as well as supervisory and managerial employees on the NM PSL requirements under the HWA.
4. **Notice & Poster Distribution:**
 - a. Distribute a written or electronic NM PSL notice to all employees on their date of hire.
 - b. Post the required poster at the worksite in an accessible and conspicuous location.

Reach out to your Risk Strategies account team with any questions. Risk Strategies will continue to monitor developments in this area and work diligently to provide our clients with the most up-to-date information.

¹ Under the HWA, family members include:

1. an employee's spouse or domestic partner; and
2. a person related to an employee or an employee's spouse or domestic partner as:
 - a. a child, including a legal ward or a child to whom the employee stands *in loco parentis*
 - b. a parent, including a legal guardian or a person who stood *in loco parentis* when the employee was a minor child
 - c. a grandparent
 - d. a grandchild
 - e. a sibling
 - f. a spouse or domestic partner of a family member
 - g. an individual whose close association with the employee or the employee's spouse or domestic partner is the equivalent of a family relationship.

TAGS:

Employee Benefits