

BERNALILLO COUNTY

BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. \_\_\_\_\_

1 MANDATING EMPLOYER PAID SICK LEAVE TO EMPLOYEES WITHIN BERNALILLO  
2 COUNTY; PRESCRIBING RULES AND PENALTIES; SETTING AN EFFECTIVE DATE  
3

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

7 WHEREAS, according to analysis of paid sick leave in Albuquerque by the University of  
8 New Mexico’s Bureau of Business and Economic Research:

- 9 • Employees least likely to have the right to earn sick time are part-time workers, those  
10 earning less than \$15,000/year and those employed in leisure, hospitality and retail  
11 sectors;
- 12 • Bernalillo County lags behind the rest of the country in rates of access to paid sick leave
- 13 • Employees without paid leave go to work sick approximately 3.5 times a year; 1.8 times  
14 with risk of spreading the illness;
- 15 • Businesses that do have paid leave experience lower turnover; and  
16

17 WHEREAS, workers in jobs with high public contact, such as health care, services,  
18 restaurant and retail employees, are unlikely to have the right to earn sick time, thereby  
19 increasing their risk of passing illnesses to co-workers and customers; and  
20

21 WHEREAS, the right to earn sick time as provided herein will reduce recovery time from  
22 illnesses, enable people to obtain preventive medical care and prenatal care, promote the use of  
23 regular medical providers rather than emergency care, enable parents to care for sick children  
24 instead of sending them to school, prevent people from spreading illness to the public and enable  
25 victims of domestic abuse, sexual assault and stalking to get away from their abusers, thereby  
26 protecting the health, safety and general welfare of people in Bernalillo County; and  
27

28 WHEREAS, victims of domestic abuse, stalking and sexual assault often lose days of paid  
29 employment or lose their jobs because they need time off to escape and recover from such  
30 situations, and that lost income is particularly devastating for such victims, who need economic  
31 security to ensure safety; and  
32

33 WHEREAS, the right to use earned sick time to care for a family member must reflect the  
34 diversity of family caregiving relationships today; and  
35

36 WHEREAS, one in six employees in the U.S. report that they or a family member has been  
37 fired, suspended, punished or threatened by an employer because they needed to take sick time to  
38 care for themselves or a family member; and  
39

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1 WHEREAS, employers are encouraged to provide more generous paid time off policies if  
2 they choose, and should not be burdened by the provisions of this ordinance in doing so.  
3

4 **Section 1. Title and Purpose**

5  
6 This Ordinance may be cited as the “Bernalillo County Sick Leave Ordinance.” The Board of  
7 County Commissioners intends to add this new Article XIII to Chapter 14 to encourage the  
8 promotion of a healthy workforce in Bernalillo County.  
9

10 **Section 2. Definitions**

11  
12 As used in this article:

13 COUNTY. The County of Bernalillo.

14 DOMESTIC PARTNER. A person with whom another person maintains a household and  
15 a mutual committed relationship, without a legally recognized marriage.

16 EARNED SICK TIME. Time that is compensated at the same hourly rate and with the  
17 same benefits, including health care benefits, as the employee normally earns during hours  
18 worked and is provided by an employer to an employee for the purposes described in this  
19 Ordinance.

20 EMPLOYEE. Any person an EMPLOYER, as defined in this Ordinance, suffers or  
21 permits to perform work for monetary compensation for at least 56 hours in a year within the  
22 unincorporated limits of the County, including on a part-time, seasonal or temporary basis.

23 EMPLOYER. Any person, estate, business trust, association, receiver, cooperative  
24 association, club, corporation, company, firm, partnership, joint venture, syndicate, legal  
25 representative, or other entity or group of persons or entities that is required to apply for a  
26 business registration from the County, such entities’ corporate officers or executives or any non-  
27 profit corporation with a physical premises within the unincorporated limits of the County, which  
28 employs two or more employees. Employer shall include the County of Bernalillo. Employer  
29 shall exclude a family owned and operated business which employs only family members.

30 FAMILY MEMBER.

- 31 (1) Regardless of age, a biological, adopted or foster child, stepchild, or legal ward, a  
32 child of a domestic partner, a child to whom the covered individual stands in loco  
33 parentis, or a person to whom the covered individual stands in loco parentis when the  
34 person was a minor or a legal guardian who is determined a de facto parent;  
35 (2) A biological, adoptive or foster parent, stepparent or legal guardian of a covered  
36 individual or a covered individual’s spouse or domestic partner or a person who stood  
37 in loco parentis when the covered individual or the covered individual’s spouse or  
38 domestic partner was a minor;  
39 (3) A person to whom the covered individual is legally married under the laws of any  
40 state, or a domestic partner of a covered individual;  
41 (4) A grandparent, grandchild or sibling, whether biological, foster, adoptive or step  
42 relationship, of the covered individual or the covered individual’s spouse or domestic  
43 partner; or  
44 (5) A designated person, which shall mean one additional person designated by a covered  
45 individual for whom the covered individual will provide care under the Paid Family  
46 and Medical Leave Act if the designated person has a serious health condition;

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1 NEW LOCAL BUSINESS. A business first incorporated within the State of New Mexico  
 2 that maintains its principal office and place of business within the unincorporated limits  
 3 of the County and that has not previously been issued a business registration from the  
 4 County.

5 YEAR. A regular and consecutive 12-month period as determined by the EMPLOYER.  
 6

7 **Section 3. Employer requirement to provide sick leave to employees. Use of leave.**  
 8 **Employer compliance.**

9  
 10 (A) Accrual of Sick Time

- 11 (1) Employees shall accrue a minimum of one (1) hour of earned sick time for every 30  
 12 hours worked, provided that employers may choose a higher accrual rate or to provide  
 13 for accrual of all earned sick time at the beginning of the year.  
 14 (2) Employees shall not accrue or use more than 56 hours of earned sick time in a year,  
 15 unless the employer's policy provides for a higher limit on use or accrual.  
 16 (3) Earned sick time shall begin to accrue on the employee's date of hire or on the  
 17 effective date of this Ordinance if an employee is already employed on that date.  
 18 (4) An employer may, but is not obligated to, loan earned sick time to an employee in  
 19 advance of accrual or eligibility by such employee.  
 20 (5) Employees exempt from overtime requirements under federal and state law will be  
 21 assumed to work no more than 40 hours in each work week for purposes of earned  
 22 sick time accrual, unless the employer selects a higher limit.  
 23 (6) Carry-over of earned sick time. Unused accrued earned sick time shall be carried over  
 24 to the following year, but employees cannot carry over more than 56 hours of earned  
 25 sick time, unless the employer's policy provides otherwise.  
 26 (7) If an employee is transferred but remains employed by the same employer, or if a  
 27 successor employer replaces the original employer, or if an employee separates from  
 28 employment but is rehired by the same employer within 12 months, the employer  
 29 shall reinstate all previously accrued and unused earned sick time to the employee, up  
 30 to a maximum of 56 hours unless the employer chooses to provide more, or unless the  
 31 employer previously chose to pay out the earned sick time upon transfer or  
 32 separation.

33 (B) Permitted Uses and Procedures for Sick Time

- 34 (1) An employer shall permit an employee to use the earned sick time accrued for:  
 35 (a) An employee's mental or physical illness, injury or health condition; medical  
 36 diagnosis, care or treatment of a mental or physical illness, injury or health  
 37 condition; or preventive medical care; or  
 38 (b) An employee to care for a family member with a mental or physical illness, injury  
 39 or health condition; to care for a family member who needs medical diagnosis,  
 40 care, or treatment of a mental or physical illness, injury or health condition; to  
 41 care for a family member who needs preventive medical care; or  
 42 (c) Closure of the employee's place of business or a family member's school or place  
 43 of care for public health reasons; or  
 44 (d) Absence necessary due to domestic abuse, sexual assault or stalking suffered by  
 45 the employee or employee's family member, provided the leave is for the  
 46 employee to obtain medical or psychological treatment or other counseling,

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- 1 relocate, prepare for or participate in legal proceedings, or obtain services, or to  
 2 assist the employee's family member with any of the above activities.
- 3 (e) An employee shall not be entitled to use accrued earned sick time until the  
 4 employee has worked 56 hours in a year.
- 5 (2) Maximum 90-day delay in benefit.
- 6 (a) Employees shall be entitled to use accrued earned sick time beginning on the 90<sup>th</sup>  
 7 calendar day following the date of hire, or the effective date of this law,  
 8 whichever is later, unless the employer's policy provides that employees may use  
 9 accrued time earlier.
- 10 (3) Request for earned sick time.
- 11 (a) An employer shall provide earned sick time upon the request of an employee or a  
 12 family member, caretaker, or medical professional acting on the employee's  
 13 behalf. Such request may be made orally, in writing, by electronic means or by  
 14 any other means acceptable to the employer. When possible, the request shall  
 15 include the expected duration of the absence.
- 16 (b) When the use of earned sick time is foreseeable or scheduled more than three  
 17 working days ahead of the anticipated date of use, such as a scheduled medical  
 18 appointment or similar matters, the employee shall provide notice to the employer  
 19 within three business days of scheduling and when possible, shall schedule the  
 20 use of earned sick time for these purposes in a manner that does not unduly  
 21 disrupt the operations of the employer. Such notice may be provided orally, in  
 22 writing, by electronic means or by any other means acceptable to the employer.
- 23 (4) Documentation of earned sick time.
- 24 (a) For earned sick time of three or more consecutive days, an employer may require  
 25 reasonable documentation that earned sick time has been used for a covered  
 26 purpose, if the employer has previously provided the policy to employees and if  
 27 the requirement is made known at the time the sick time is requested.
- 28 (b) Documentation from a health care professional indicating that earned sick time is  
 29 necessary shall be considered reasonable.
- 30 (c) If an employer chooses to require documentation from a health care professional,  
 31 the employer is responsible for reimbursing out-of-pocket medical expenses that  
 32 the employee incurs in obtaining the documentation, if the medical visit is not  
 33 medically necessary and made solely to obtain documentation for the employer,  
 34 and if such costs are not covered by the employee's or family member's insurance  
 35 plan.
- 36 (d) In cases of domestic abuse, sexual assault or stalking, reasonable documentation  
 37 may include a police report, a court-issued document, or a signed statement from  
 38 a victim services organization, clergy member, attorney, advocate, or other person  
 39 affirming that the earned sick time was taken for one of the permitted uses.
- 40 (e) An employer may not require that the documentation explain the nature of any  
 41 medical condition or the details of the domestic abuse, sexual assault, or stalking.
- 42 (5) An employer shall not require an employee to find a replacement worker as a  
 43 condition of using earned sick time nor count use of earned sick time in a way that  
 44 will lead to discipline, discharge, demotion, non-promotion, suspension or any other  
 45 adverse action.

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

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

8 (C) Record Keeping

9 (1) Employers shall accurately track and record the amount of earned sick time accrued  
10 or used by each employee for each pay period in any format the employer chooses,  
11 keep such records for the time period required for employment and payroll records set  
12 forth in 11.3.400.401(F) NMAC, and make such records available to the County upon  
13 request.

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

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

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

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

24 (6) Employers may, but are not required to, track or provide earned sick time separately  
25 from other forms of paid time off.  
26

27 **Section 4. Enforcement of sick leave provisions.**

28  
29 (A) Administrative investigation and enforcement.

30 (1) Any person or organization may file an administrative complaint with the County  
31 charging that an employer has violated this Ordinance as to any employee or other  
32 person.

33 (2) When the County receives a complaint, the County may review records regarding all  
34 employees at the employer's worksite in order to protect the identity of any employee  
35 identified in the complaint and to determine whether a pattern of violations has  
36 occurred.

37 (3) The name of any employee identified in a complaint to the County shall be kept  
38 confidential as long as possible. Where the County determines that an employee's  
39 name must be disclosed in order to investigate a complaint further, it may do so only  
40 with the employee's consent.

41 (4) When the County identifies a violation, it may attempt to reach an administrative  
42 resolution for payment of damages and penalties as set forth herein prior to bringing  
43 enforcement action in court.

44 (5) Any guidelines or rules promulgated by the County shall have the force and effect of  
45 law and may be relied on by employers, employees and other parties to determine  
46 their rights and responsibilities under this Ordinance.

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(6) Any business which fails to comply with a notice of inspection within 7-business days shall forfeit their County business registration.

(B) Civil Enforcement

(1) The County or any person or any entity, a member of which is aggrieved by a violation of this Ordinance, may bring a civil action in a court of competent jurisdiction against an employer.

(2) Upon prevailing, the employee shall recover all appropriate legal or equitable relief, liquidated damages calculated at three times the value of the earned sick time accrued, the costs and expenses of suit, and reasonable attorney’s fees; and in the case of retaliation or adverse action, the plaintiff shall also recover actual damages, including but not limited to back pay, and shall have a right to reinstatement, rescission of discipline or other appropriate relief.

(3) In an action brought by the County, any damages recovered shall be payable to the individual employees who experienced the violation.

(C) Penalties.

(1) In addition to the civil remedies, any employer found to be in violation of this Ordinance shall also be liable for a civil penalty payable to the county of fifty dollars per week for each separate violation, not to exceed a maximum of \$500 for each offense.

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

**Section 5. Notice to employees of sick leave requirements. Regulations.**

(A) Each employer subject to the provisions of Section 3 shall, at the time of hiring, provide notice to each employee:

- (1) of the entitlement to earned sick time for employees, the amount of sick leave provided to employees and the terms under which earned sick time may be used;
- (2) ways in which an employee may notify an employer of the use of leave, whether orally, in writing or electronically, and to whom;
- (3) if the employer may require documentation for sick leave use, and is responsible for reimbursing out-of-pocket medical expenses that the employee incurs in obtaining the documentation, if the medical visit is not medically necessary and made solely to obtain documentation for the employer, and if such costs are not covered by the employee’s or family member’s insurance plan;
- (4) that retaliation by the employer against the employee for requesting or using sick leave for which the employee is eligible is prohibited; and,
- (5) that the employee has a right to file a complaint with the county for any violation of this Ordinance.

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

(C) The County may adopt regulations to establish additional requirements concerning the means by which employers shall provide such notice.

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1 (D) On or before the effective date of this Ordinance, the County shall make available on its  
2 website a summary notice to employees in English and Spanish of each provision of this  
3 Ordinance.  
4

5 **Section 6. Relationship to other requirements.**  
6

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

12 (B) This Ordinance shall not be construed to diminish or impair the rights or obligations of an  
13 employee or employer under any valid contract, collective bargaining agreement,  
14 employment benefit plan or other agreement providing more generous earned sick time to  
15 an employee than required herein.  
16

17 **Section 7. No impact on more generous sick time or paid time off policies; no separate**  
18 **tracking; no additional sick time required.**  
19

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

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

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

34 **Section 8. Temporary exemption for new local business**  
35

36 (A) New local businesses shall be exempt from the requirements of this ordinance during the  
37 first twelve (12) months of operation as calculated from the date the new local business is  
38 issued its initial business registration permit with the County. Upon the expiration of 90  
39 days from the date of its business registration with the County, the County shall provide  
40 written notice to each new local business of the business’ obligation to comply with the  
41 requirements of this Ordinance after its first twelve (12) months of operation.  
42

43 **Section 9. Severability Clause**  
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45 If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason  
46 held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall

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1 not affect the validity of the remaining provisions of this Ordinance. The Commission hereby  
2 declares that it would have passed this Ordinance and each section, paragraph, sentence, clause,  
3 word or phrase thereof irrespective of any provisions being declared unconstitutional or  
4 otherwise invalid.

5  
6 **Section 10. Compilation**

7  
8 The Ordinance amendment prescribed by Sections 1 through 8 shall amend, be incorporated in,  
9 and made part of the Bernalillo County Code.

10  
11 **Section 11. Effective Date.**

12  
13 This Ordinance shall take effect 120 days following the date of enactment or on the date of  
14 termination of any collective bargaining agreement.

15  
16 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**  
17 **BERNALILLO COUNTY, NEW MEXICO** this \_\_\_ day of \_\_\_\_\_, 2019.  
18

19 **APPROVED AS TO FORM**

**BOARD OF COUNTY COMMISSIONERS**

20  
21 \_\_\_\_\_  
22 W. Ken Martinez, County Attorney

23 \_\_\_\_\_  
24 Maggie Hart Stebbins, Chair

25 \_\_\_\_\_  
26 Debbie O'Malley, Vice Chair

27 \_\_\_\_\_  
28 Steven Michael Quezada, Member

29 **ATTEST:**

30 \_\_\_\_\_  
31 Lonnie C. Talbert, Member

32 \_\_\_\_\_  
33 Linda Stover, County Clerk

34 \_\_\_\_\_  
35 Charlene E. Pyskoty, Member  
36  
37  
38  
39  
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