

EMPLOYMENT LAW SUMMARY

New Mexico: Employee Leave Laws— Overview



Employers generally have some flexibility when it comes to establishing or negotiating employee leave policies. However, New Mexico state law requires employers to provide their employees with certain types of paid and unpaid leave. (Employers must also comply with federal leave laws, not discussed here, such as the Family and Medical Leave Act.)

New Mexico state law includes the following employee leave mandates:

- Paid sick leave;
- Caregiving leave;
- Voting leave;
- Jury duty leave;
- Volunteer emergency responder leave;
- Domestic abuse leave; and
- Military leave.

The chart below provides a high-level overview of New Mexico state laws on employee leave.

New Mexico Employee Leave Laws

TYPE OF LEAVE	REQUIREMENTS
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<p>Paid Sick Leave</p>	<p>New Mexico private employers must provide up to 64 hours of paid sick leave annually. All employees are eligible for leave, including part-time, seasonal and temporary employees. Employees accrue at least one hour of leave for every 30 hours worked, or employers may frontload 64 hours of paid leave on Jan. 1 each year. Leave carries over from year to year, but employee use of leave may be capped at 64 hours annually. Leave begins accruing and may be used at the start of employment or July 1, 2022, whichever is later.</p> <p>An employee may use paid sick leave for:</p> <ul style="list-style-type: none"> • The employee's or a family member's mental or physical illness, injury or health condition; medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or preventive medical care; • Meetings at the employee's child's school or place of care related to the child's health or disability; or • Absence necessary due to domestic abuse, sexual assault or stalking suffered by the employee or a family member of the employee; provided that the leave is for the employee to: <ul style="list-style-type: none"> ◦ obtain medical or psychological treatment or other counseling; ◦ relocate; or prepare for or participate in legal proceedings; or ◦ obtain services or assist a family member with any of the above activities. <p>Family member is defined broadly and includes, among others, an employee's spouse; domestic partner; the biological, adopted foster or step child or parent of either; a grandparent, grandchild or biological, foster, step or adopted sibling of either; a legal ward and in loco parentis and family equivalent relationships.</p> <p>Payout on separation of employment is not required. Employer policies providing leave benefits equivalent to those in the law will satisfy its requirements.</p>
<p>Caregiver Leave</p>	<p>Employers that provide employees with paid sick leave must permit their employees to use the leave to care for family members under the same terms and procedures. "Family member" means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle of an eligible employee.</p>
<p>Voting Leave</p>	<p>Employers must allow employees up to two hours of leave to vote on an election day. However, voting leave is not required for an employee whose workday begins two or more hours after the polls open or ends three or more hours before the polls close.</p> <p>An employer may designate the hours an employee may take leave to vote. An employee who takes leave to vote may not be liable for any penalty. The Attorney General has stated the law requires up to two hours of voting leave to be paid for hourly workers.</p>
<p>Jury Duty Leave</p>	<p>An employer may not terminate, threaten or coerce an employee who receives a jury summons or serves on a jury. Employers cannot require employees to use annual, vacation or sick leave for time spent serving on a jury.</p>
<p>Volunteer Emergency Responder Leave</p>	<p>Employers must grant unpaid leave to volunteer emergency responders in order to respond to emergencies or disasters. Employees are responsible for properly notifying their employers and providing documentation of the leave.</p> <p>An employee who takes leave for this purpose may not be terminated, demoted or discriminated against in any manner of employment. However, protection from termination does not apply if the employee is absent for more than 10 business days in a calendar year.</p>

TYPE OF LEAVE	REQUIREMENTS
<p>Domestic Abuse Leave</p>	<p>Every employer must provide leave to an employee who:</p> <ul style="list-style-type: none"> • Is a victim of domestic abuse; or • Has a family member (including the employee’s minor child or a person for whom the employee is a legal guardian) who is a victim of domestic abuse. <p>Domestic abuse leave is intermittent leave of up to 14 days (paid or unpaid) in a calendar year. An employee may take domestic abuse leave for up to eight hours in one day in order to:</p> <ul style="list-style-type: none"> • Obtain an order of protection or other judicial relief from domestic abuse; • Meet with law enforcement officials; • Consult with attorneys or district attorneys’ victim advocates; or • Attend court proceedings related to the domestic abuse. <p>When domestic abuse leave is taken in an emergency, the employee (or his or her designee) must notify the employer within 24 hours of taking leave. An employer may require verification of the need for leave, including a police report, order of protection or other court evidence, or a written statement from an attorney or another person who is representing the employee in connection with domestic abuse.</p> <p>An employee must be allowed to use accrued sick leave or other available paid time, compensatory time or unpaid leave, consistent with an employer’s policies. The employer must continue an employee’s health insurance coverage and other accrued benefits during domestic abuse leave. Any leave taken by an employee may not be considered when calculating his or her eligibility for benefits.</p> <p>Employers may not retaliate against any employee who takes domestic abuse leave. Any information obtained regarding an employee’s incident of domestic abuse must remain confidential.</p>
<p>Military Leave</p>	<p>In addition to the federal law, the Uniformed Services Employment and Reemployment Act (USERRA), New Mexico law provides the following job protections for military members:</p> <ul style="list-style-type: none"> • A member of the United States Armed Forces, National Guard or organized reserve who serves on active duty and is honorably discharged or released from duty must be reinstated to his or her original position (or to a position of like seniority, status and pay). The member must apply for reemployment within 90 days after being relieved from service or hospitalization (unless hospitalization after discharge lasted more than one year). • Upon reemployment, the military member may not lose seniority and is entitled to participate in insurance or other benefits offered by the employer. Returning military members may not be discharged without cause within one year after reemployment. • The rights, benefits and protections of USERRA apply to national guard members of any state or U.S. territory ordered to federal or state active duty. <p>An employer may not refuse to hire, penalize or discharge any person due to his or her membership in the National Guard, or prevent the member from performing military service.</p>

SPECIAL NOTE: Please note that the information in the above chart focuses on statewide laws. Employers must be aware that localities across the country have enacted ordinances requiring employers to provide leave to employees. An employer located in a city, county or town with a local paid sick leave law must comply with the local ordinance and statewide law.

More Information

Contact Heffernan Insurance Brokers for more information on employee leave laws in New Mexico.

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