

What YOU need to know about the proposed Albuquerque Healthy Workforce Ordinance

As soon as this fall, Albuquerque voters may be voting for mandatory paid sick leave for all Albuquerque employees based solely upon a brief, inadequate, 4-sentence description of a broad-reaching and harmful Ordinance. The so-called Healthy Workforce Ordinance would require all employers, big and small, to provide all employees within the city with paid sick leave. Implementation of this law would have a significant negative impact on Albuquerque employers and employees. If adopted, the Ordinance would not be subject to revision or compromise, and would go into effect as is.

- **Would my organization be subject to the Ordinance?** Yes. All employers, large and small, with employees working in the City of Albuquerque would be subject to this Ordinance, without exception (even if the Organization itself is not based in Albuquerque, an employer only needs to have a “physical premises” in the City to be subject).
- **Would I have to pay all my employees paid sick leave?** All employees (including full-time, part-time, seasonal, and temporary employees) who work 56 or more hours within a year within the city limits of Albuquerque would have to be provided with paid sick leave. Employees who work less than 56 hours within Albuquerque city limits within a year would not need to be provided with paid sick leave. However, any employees, even those who are not based in Albuquerque, who do in excess of 56 hours of work (including training, meetings, sales calls, etc.) within City limits could be subject to the Ordinance if the employer has a physical premises in the City. Specifically, the language of the ordinance does not say that mandatory paid time off only accrues on hours worked within the City; it says that employees become eligible under the statute if they work 56 or more hours within the City and is silent as to where hours must be worked in order to qualify for accruals.
- **How much paid time off are we talking about?** Every single employer subject to the Ordinance would be required to provide every eligible employee with one hour of paid sick leave for every 30 hours worked.
 - **Employers with less than 40 employees** are considered to be “small employers” under the Ordinance. (For this purpose, the number of employees is determined based upon all employees within the organization, including those located outside of Albuquerque.) Small employers would be required to allow employees to use at least 40 hours of accrued sick leave each year.
 - **Employers with 40 or more employees** are considered to be “large employers” under the Ordinance. Large employers would be required to allow employees to use at least 56 hours of accrued sick leave each year.
- **Can’t I just keep using my existing paid time off policy?** Probably not. Most employers’ existing paid time off policies will not be in compliance with the strict requirements of the Ordinance. Compliant paid time off policies would need to:
 - Provide to each and every eligible employee (including part-time, seasonal, and temporary employees who work at least 56 hours in the year within the City) at least one hour of paid sick leave accrual for every 30 hours worked;
 - Track and report how each and every hour of paid leave was used (whether for sickness or another allowable reason under the proposed Ordinance, or whether the time off was used for a reason not covered by the Ordinance, such as vacation and family events). Employers would be required to maintain payroll records for each employee showing the weekly hours worked, wages paid, and the amount of paid sick time accrued and/or used each pay period;
 - Accrue paid leave beginning the first day of employment;
 - Allow employees to use accrued paid leave no later than 90 days after the start of employment;
 - Allow employees who leave the organization and are rehired within 12 months to access previously accrued and unused paid leave; and
 - Permit employees to carry over unused paid sick leave hours to the following year. There is no indication within the Ordinance that these rolled-over accruals cannot continue to build year-upon-

year. As a result, employees who are rarely ill could end up carrying a large amount of accrued paid sick leave (which is often a logistical, accounting, and record keeping nightmare).

- **Can I require that an employee who takes paid sick time provide documentation confirming the reason that they were absent?** Yes, if the employee is absent for 3 or more consecutive days the employer may require that the employee provide documentation proving that their absence was for a purpose covered under the Ordinance. However, the employer is responsible for any out-of-pocket costs (such as co-pays) incurred by the employee in order for them to obtain documentation proving the reason for their absence.
- **Can I require that an employee who takes paid sick leave find a replacement to work their shift?** No. An employee can be asked to assist in finding a replacement, but their entitlement to use accrued paid sick leave cannot be contingent upon their locating a replacement to work for them.
- **What happens if an employee sues my organization under the proposed Ordinance?** The setup of the Ordinance is harshly anti-employer and very favorable to employees seeking to file suit.
 - The Ordinance creates a presumption of retaliation by employers. Essentially, if an employer chooses to terminate, demote, or take another non-favorable employment action (including bad marks on a review or a reduction in hours) within 90 days of that employee having made any noise about the Ordinance, or really, any employee who took leave under the Ordinance, then the presumption is that the employer retaliated and the burden of proof would be on the employer to demonstrate that they took the non-favorable action against the employee for some other, non-retaliatory reason.
 - Employees would have the right to form a class action to sue an employer. Meaning that instead of facing individual lawsuits for violations, an employee (or former employee) could sue the organization on behalf of themselves and other similarly situated employees (the employee bringing suit would not need the consent of the other employees to file suit on their behalf).
 - Under the Ordinance, a successful suit against an employer could cost the employer:
 - Damages to account for “appropriate legal and equitable relief” – a fairly arbitrary amount set by a judge or jury;
 - Three times the dollar value of any sick leave due but not granted or paid by the employer;
 - Civil penalties of \$50 per week per employee (maximum of \$500 per employee);
 - Costs and attorney fees incurred by the employee(s) and their attorneys in bringing the suit (in many cases, this will be the most expensive part of a violation); and
 - In the case of a finding that the employer retaliated against the employee for asserting his or her rights under the Ordinance, reinstatement of the employee to their previous job and/or additional monetary damages including lost wages.
 - Under the Ordinance, employers can also be subject to audit and investigation by the City Attorney’s Office. The City Attorneys would be empowered to investigate and inspect employer records, enforce penalties payable to the City, and grant employees (and/or former employees) monetary damages.

Bottom line, the proposed Albuquerque Healthy Workforce Ordinance would create a tremendous burden on Albuquerque businesses. Employers would be forced to overhaul existing paid time off policies (or do away with them all together and return to the days of separate sick and vacation leave banks) and would be exposed to a potential legal minefield.

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