The Healthy Workplaces Act (HWA) of 2021 is a law requiring all private employers in New Mexico to allow employees to accrue and use a benefit called earned sick leave. The law takes effect on July 1, 2022. The Act allows employees to earn and use up to 64 hours of sick leave per year. Employees may use this leave for various reasons listed in the Act, like the employee’s or their qualifying family member's illness or injury, or to deal with certain legal and family issues.

**Who is Covered:**

All private employers in New Mexico, regardless of size, are covered. This includes corporations and other business organizations. The Act covers all employees performing services for private employers in New Mexico, regardless of how long they have been employed or their age. This includes fulltime, part-time, seasonal, and temporary employees.

**Who is Not Covered:**

The following individuals are not covered by the Healthy Workplaces Act:

• Anyone performing services for an employer outside the state of New Mexico.

• Anyone performing services on tribal land.

• Independent contractors.

• 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.

**Civil Liability for Noncompliance:**

Employers who do not honor an employee’s rights to sick leave face potential civil liability. The Act authorizes the Labor Relations Division (LRD) of the New Mexico Department of Workforce Solutions (DWS) to investigate violations and enforce the Healthy Workplaces Act. The Act also authorizes private lawsuits against employers for compliance.

**Collective Bargaining Agreements:**

Section 4 of the newly enacted law requires that the HWA benefits be added to a collective bargaining agreement, unless those HWA benefits are already provided in the CBA: “on the effective date of the Healthy Workplaces Act, the sick leave required by that act shall be 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 Healthy

Workplaces Act.

Given that CBAs negotiated prior to the passage of the HWA would not have PTO provisions which provide time, “for the same purposes and under the same terms and conditions of the HWA,” such benefits must be added to the current benefits, unless the CBA is modified to reflect such provisions.

**Accrual:**

Covered employees must earn at least one hour of sick leave for every 30 hours worked. Employees begin to accrue sick leave upon hire or July 1, 2022, whichever is later. At least 64 hours of accrued but unused sick leave carries over from year to year.

**Usage:**

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.

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.

**Employer Notice and Record-keeping Requirements:**

An employer must give every employee written or electronic notice of the following:

• The employee's right to earned sick leave.

• How earned sick leave is accrued and calculated.

• The terms of use of earned sick leave as guaranteed by the Act.

• Retaliation for exercising one’s rights to earned sick leave is prohibited.

• The employee's right to file a complaint with the LRD for alleged violations of the Act.

• All means of enforcing violations of the Act.

This notice must be in English, Spanish, or any other language, if requested by the employee, that is the first language spoken by at least ten percent of the employer's workforce.

Employers must display a poster containing the above information in a conspicuous and accessible place in each establishment with employees. Employers must also provide employees with an accurate year-to-date summary, in writing, of earned sick leave accrued and used at least once every calendar quarter.

**Things NOT included in this ACT:**

Employers areNOT required to buy back/buy out any unused sick leave accrued upon the separation of an employee from their employer.

The union is not responsible for the oversight of this benefit as it is mandated by the State of New Mexico and is not covered by our current CBA. All issues concerning paid sick leave must be directed to the State New Mexico Wage and Hours division. Please use the following link to submit any issues <https://www.dws.state.nm.us/en-us/Labor-Relations/Labor-Information/Wage-and-Hour>

**Frequently Asked Questions:**

1. **Q;** Do all private employers performing work under the (PWMWA) Public Works Minimum Wage Act have to pay fringe benefits on paid sick leave? Most nonunion employers do not provide fringe benefits under the Act they pay fringe benefit rate on the check.

**A:** Yes.  Fringe benefits must be paid.  If they just pay a fringe benefit rate, that rate must be included.  Here is the definition from the statute (Section 2(c)):  "earned sick leave" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to that employee for the purposes described in the Healthy Workplaces Act.

1. **Q:** Does the new law pay for an employee’s premium pay if working nights or do they receive their regular base rate of pay?

**A:** Yes.  Again, section 2(c) says it must be "compensated at the same hourly rate and with the same benefits . . . As an employee normally earns during hours worked."  If an employee "normally earns" night premium pay, then he should be paid at that rate.