



Key Elements of the Healthy Workplaces Act

Nuts and Bolts of Accrual and Usage

- If your organization has one or more employees, including full-time, part-time, seasonal and temporary, all employees must begin to accrue, use and track earned sick leave, beginning July 1, 2022, or on the employee's hire date whichever is later.
- The minimum amount of accrual is 1 hour of leave for every 30 hours worked in a 12-month period. An employer may allow employees to earn a higher accrual rate.
- Employees can use earned sick leave once it is accrued but cannot use hours that are not in their balance.
- When an FLSA nonexempt employee works more than 40 hours per seven-day work week the employee accrues earned sick leave on those overtime hours at the same rate as on regular worked hours --1 hour of earned sick leave for every 30 hours worked (unless an employer has chosen a higher accrual rate for its employees or if required under the terms of any applicable collective bargaining agreement.)
- An employer may "award" all 64 hours of sick leave, or a prorated number of hours, to employees in one shot. If an FLSA nonexempt employee works more than 40 hours in a 7-day workweek, you must ensure the employee earns sick leave on the overtime hours for that specific week. If an employee leaves the organization before they would have accrued those 64 hours, an employer cannot recoup those hours through payroll deductions even if the employee signs an agreement authorizing such.
- An FLSA-exempt employee is assumed to work 40 hours in a workweek. If their workweek is less than 40 hours a week, the accrual will be based on the employee's normal work week.
- Employees are not entitled to use more than 64 hours of earned sick leave in a 12-month period unless the employer allows more.
- Employees may carry over accrued unused earned sick leave from one 12-month period to the next.
- An employee may use sick leave in the smallest increment that the payroll system uses to account for absences or use of other time.

What is the 12-month Period?

- You can choose from different methods to determine your organization's 12-month period:
 - a) Calendar year;
 - b) Any fixed 12-month leave year, such as fiscal year or year starting on employee's anniversary date;
 - c) Twelve-month period measured forward from the date an employee's first use of earned sick leave occurs;

- d) A rolling 12-month period measured backward from the date an employee uses any earned sick leave.

What Counts as a Valid Reason for Using Sick Leave?

- Employee may use sick leave for:
 - a) Employee's own or family member's mental or physical illness, injury or health condition, and preventive medical care;
 - b) Employee is attending a meeting at their child's school or place of care relating to the child's health or disability;
 - c) Employee's own or family member's absence due to domestic abuse, sexual assault or stalking. In this situation, earned sick leave is for the employee to:
 - i) Obtain medical or psychological treatment or other counseling;
 - ii) Relocate;
 - iii) Prepare for or participate in legal proceedings; or
 - iv) Obtain services or assist a family member of the employee with any of the activities set forth in above in subparagraphs (i) through (iii).

Does a Cousin Count as a Family Member?

- An employee's cousin may count as a family member if that cousin has a close association with the employee. The Healthy Workplaces Act defines family member as:
 - A) Spouse or domestic partner; or a person related to an employee or employee's spouse or domestic partner, including:
 - i) Biological, adopted or foster child, a stepchild or legal ward, or a child to whom the employee stands in loco parentis;
 - ii) Biological, foster, step or adoptive parent or legal guardian, or a person who stood in loco parentis when the employee was a minor child;
 - iii) Grandparent;
 - iv) Grandchild;
 - v) Biological, foster, step or adopted sibling;
 - B) Spouse or domestic partner of a family member; or
 - C) Individual whose close association with the employee or the employee's spouse or domestic partner is the equivalent of a family relationship.

What Happens If Your Employee Leaves Your Organization?

- If an employee leaves an organization they lose the sick leave hours they've accrued and not used. An employer may decide to pay the employee the value of those unused hours but it is by no means required to do that.
- If you rehire a former employee within 12 months of their termination all unused sick leave from the employee's prior employment is reinstated and eligible for use immediately. If you paid out the employee's unused leave hours previously, those hours are counted as "used" and shall not be reinstated.
- An employee who transfers to another entity within the employer carries their unused sick leave hours with them. If a new company buys an organization the employees of that organization maintain their accrued sick leave hours.

Documentation and Recordkeeping

- Employer must maintain documentation of employees' hours worked and earned sick leave taken by employee for 48 months.
- You shall grant the leave when requested whether or not the employee has documentation.
- An employer cannot ask for documentation when the sick leave absence is less than two consecutive workdays.
- If you require an employee to provide a note from the doctor or other documentation when an employee uses sick leave for two or more consecutive work days, you must give the employee 14 days from the date they return to work to provide such documentation.

Healthy Workplaces Act No-Nos

- Do not count an employee's use of sick leave in a way that will lead to discipline, discharge, demotion, non-promotion, less favorable scheduling, reduction in hours, suspension or any other adverse action.
- Do not require your employee to find a replacement to cover their missed hours.
- Do not require your employee to use other paid leave before using sick leave.

Employer Notice Requirements and Compliance

- Employers must give employees a year-to-date written summary of sick leave accrued and used at least once every calendar quarter. The easiest way to meet this requirement is to include the information on an employee's paycheck or pay advice.
- An organization must notify employees of the Healthy Workplace Act in new hire orientation and hang in a conspicuous spot a poster in English, Spanish and any other language in which 10% of the employees speak. The new hire notice must include this information:
 - a) Employee's rights to earned sick leave;
 - b) The manner in which sick leave is accrued and calculated;
 - c) The terms of use of earned sick leave as guaranteed by the Healthy Workplaces Act;
 - d) That retaliation against employees for using sick leave is prohibited; the employee's right to file a complaint with the division (New Mexico Department of Workforce Solutions Labor Relations Division; LRD) if earned sick leave accrual or use is denied; or If the employee is retaliated against;
 - e) All means of enforcing the Healthy Workplaces Act.

Employee Rights

- If an employee feels their employer is not complying, they may file a complaint alleging violations of the HWA or the New Mexico Department of Workforce Solutions Labor Relations Division Rules, including retaliation, with the Division.

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