

EMPLOYEE WELLNESS ACT GUIDANCE

GENERAL GUIDANCE:

Q. When does the Employee Wellness Act, referred to as the Paid Time Off ordinance, (PTO) take effect?

A. October 1, 2020 (The original implementation date was July 1, 2020 but was changed by the County Manager's executive order on June 11, 2020)

Q. Which version of the state law 50-4-21 does the Employee Wellness Act reference?

A. There have been three versions of this statute since the publishing of the Employee Wellness Act. The version that the Employee Wellness Act intended to reference was the version of the law that was in effect from January 18, 2008 through June 13, 2019.

Q. Which businesses need to adhere to the PTO ordinance?

A. All businesses within the unincorporated limits of the County with 2 or more employees. However, a newly registered business within the unincorporated limits County is exempt from the PTO ordinance for the first 12 months of the businesses operations. Ex: 365 days – no accrual, 366 day – accrual begins.

Q. How does accrual work?

A. The PTO ordinance will be phased in over three years. Employees earn paid time off based on company size, as scheduled:

Dates	2-10 Employees	11-34 Employees	35+ Employees
Oct. 1, 2020	28 hrs	28 hrs	28 hrs
July 1, 2021	28 hrs	44 hrs	44 hrs
July 1, 2022	28 hrs	44 hrs	56 hrs

Q. When does PTO accrual begin?

A. Accrual of paid time off begins on the employee's date of employment or the effective date of this ordinance if the employee is already employed. On the date of employment or effective

date of this ordinance, employees should be notified by the employer of PTO rules, including but not limited to: accrual rate and reporting, how an employee can request use of paid time off, how to request an employee accounting of PTO available, and rights under the ordinance.

Q. What is the accrual rate?

A. An employee accrues one hour of paid time off for every 32 hours worked. An employee cannot accrue more than 28, 44, or 56 hours in a year, depending upon business size. PTO is accrued at a rate of .03125 per hour worked. Please reference the Bernalillo County Employee Wellness Act Accrual Sheets.

Q. Do employees carry over hours yearly?

A. Yes. Hours do carry over from year to year but do not exceed the maximum allowed. For example, if an employee has 48 hours of accrued leave, the 48 hours would carry over into the new year, but would cap at 56, depending upon the size of the business. This example shows the largest size business in year three.

Q. For what purpose can an employee use the paid time off? Vacations? Sickness? Childcare?

A. An employee can use the PTO for any reason or purpose.

Q. When can an employee begin using their PTO?

A. An employee may begin using their PTO on the 90th calendar day following either their date of employment or the effective date of the ordinance if they were already employed at the time the ordinance took effect.

Q. What if an employee files a complaint?

A. When an employee files a complaint, the employer is notified and an investigation begins. The employer is asked to provide records of the employee's PTO accrual and usage. If a violation is identified, the employer is asked to fairly compensate the employee for PTO. If there is still a discrepancy, a hearing officer will render a final decision.

Q. What if an employer, or employee, disagrees with the hearing officer's decision?

A. The employer and employee have all rights as afforded by law to settle the dispute through legal means. Under the ordinance, the County will make all attempts to settle any disputes through mediation in a non-confrontational and civil manner prior to any legal proceedings.

Q. Does this ordinance cover union employees?

A. Union employees covered by a collective bargaining agreement are governed by the agreement's grievance process, eligibility requirements, and accrual processes.

Q. What if an employer's current PTO offerings are greater than the PTO ordinance requirements?

A. The employer's current provisions shall prevail and will be at the discretion of the employer. If an employer chooses to change the PTO offerings, the subsequent plan shall meet any, and all, county PTO requirements.

GUIDANCE FOR EMPLOYERS:

Q. Sick time is unforeseen. However, employees can and do plan for vacations, doctor's appointments, or a child's day off from school. How should employers be notified of an employee's requested paid time off?

A. At the time of employment or the effective date of the ordinance if an employee is already employed, employers should inform employees of the manner in which the employer requires notification for the request, whether written, verbal, electronic, or by other means deemed appropriate.

Q. Can the employer require the employee requesting time off to secure a replacement for their absence?

A. No, an employer cannot require this of an employee.

Q. Can employers let other workers know why an employee is absent?

A. No, all leave is **confidential** between employer and employee.

Q. If an employer front loads, or offers paid time off hours at the beginning of each year, do the hours need to be used by the end of the year or paid out at year's end?

A. This is up to the discretion of the employer.

Q. Does an employer have to pay an employee for unused PTO upon separation of employment?

A. This is at the discretion of the employer.

Q. How should an employer keep track of each employees PTO?

A. This is at the discretion of the employer as each company keeps its records differently. The only requirement is that some accountability be kept and is accessible to employees, meaning that if an employee requests the amount of leave they have available for use, an accounting must be available.

Q. Who else can see the employee's record of PTO?

A. This record must be kept and made available to the county upon request.

Q. What happens if an employer does not keep the records?

A. This a violation of the county ordinance. In the event the employer cannot produce PTO records, a fact-finder may rely upon the pay stubs and working hours produced by an employee to estimate PTO available to an employee. **KEEP ACCURATE RECORDS!** It benefits everyone.

Q. What if an employer is found to be in violation of PTO ordinance?

A. In addition to any civil remedies, any employer found to be in violation of the PTO ordinance is subject to a \$50 fine per violation, not to exceed a maximum of \$500 for each offense.

Q. Are there information pamphlets or posters available for employers?

A. The county will supply break room posters, similar to minimum wage posters that should be displayed. A copy of the Paid Time Off ordinance is available online at bernco.gov. Questions can be directed to: Bernalillo County Planning and Development Services at 505-314-0300.

