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To: Business Owner

Subject: Proposed Ordinance R-2016-058 “Albuquerque
Healthy Workforce Ordinance”

If the proposed Albuquerque Healthy Workplace Ordinance (“AHO”) is passed, all employers, big and small, will be required to provide all employees within the City of Albuquerque paid sick leave and account for the accrual and use of the leave. A copy of the AHO is enclosed.

If the AHO is adopted, we recommend business owners do the following within 90 days:

1. Start accruing a minimum of one hour paid sick leave for every 30 hours an employee works, even if such work is outside of Albuquerque. If you are a “large” employer (those with 40 or more employees), allow all employees to use up to 56 hours of sick leave per calendar year. If you have fewer than 40 employees, allow all employees to use 40 hours of sick leave per calendar year.
2. Allow employees to use sick time not only for their own illness but: (a) for medical appointments, treatments and preventive care of the employee or a family member; (b) when there is a closure of the office, their school or child care center for a public health reason, or (c) for necessary absences due to domestic violence, sexual assault or stalking of the employee or his or her family member to obtain any type of treatment, participate in any legal proceeding or obtain any related service.
3. Allow employees to use paid leave within 90 days of the start of employment, and if they leave and then return to employment within 12 months, allow them to use previously accrued and unpaid leave. Allow employees to carry over accrued leave to the next year.
4. Maintain payroll records for each employee showing the weekly hours worked per pay period, the wages paid, and the amount of paid sick time accrued and/or used each pay period. Also reflect any other paid leave and include that information on their pay stubs. Keep all such records for 4 years.
5. Inform employees that they will be required to provide reasonable documentation if they use 3 or more days of consecutive sick leave. Tell employees the documentation does not need to reveal the nature of the leave or any details of domestic violence, sexual assault or stalking.

6. Inform employees that confidentiality will be maintained for any such documentation and if they incur any “out of pocket” expenses in obtaining requested documentation, you will be responsible for payment of the actual expenses they incur.
7. Inform employees that they will not be subject to any retaliation, discipline or other adverse employment action because the employee has taken leave or has made a good faith allegation of a violation of the AHWO.
8. Cooperate with the City Attorney offices should a complaint for violation of the AHWO be filed.

We also recommend that you amend any sick leave policy they may have in place so it complies with the provisions of the AHWO. We also encourage you to consult with their own attorneys to ensure they are in compliance with the AHWO and other applicable state and federal laws.

Enclosure

1 Proposed measure to be submitted to the voters at the next regular or special
2 municipal election, or the November 8, 2016 general election, concerning an
3 ordinance to allow employees to accrue and use sick leave and establishing
4 procedures for notice, recordkeeping, and enforcement.

5 **SUMMARY OF PROPOSED MEASURE**

6 Proposing to enact the Albuquerque Healthy Workforce Ordinance such that,
7 beginning 90 days after enactment: First, Albuquerque employers must allow
8 employees to accrue sick leave at the rate of one hour of leave per 30 hours
9 worked. Second, employees may use sick leave for their own or a family
10 member’s illness, injury, or medical care, or for absences related to domestic
11 violence, sexual assault or stalking. Third, employers with 40 or more
12 employees must allow each employee to use up to 56 hours of accrued sick
13 leave each year, and employers with fewer than 40 employees must allow each
14 employee to use up to 40 hours of accrued sick leave each year. Fourth,
15 employers must notify employees of their rights and maintain records. The
16 ordinance also provides for public enforcement, a private right of action, and
17 liquidated damages and penalties for noncompliance or retaliation.

18 **TITLE AND PROPOSED ORDINANCE**

19 An Initiative Ordinance of the City of Albuquerque Amending Title 13 of the
20 Albuquerque Municipal Code to Allow Employees to Accrue and Use Sick
21 Leave; Establishing Procedures for Notice, Recordkeeping, and Enforcement.
22 WHEREAS, approximately 49% of private sector workers and 77% of part-time
23 workers in Albuquerque lack paid sick time, which compels them to work
24 when they should be recuperating from illness or injury and increases the risk
25 of passing illnesses to others.

26 NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF
27 ALBUQUERQUE:

28 § 13-16-1 SHORT TITLE. This article may be cited as “the Albuquerque Healthy
29 Workforce Ordinance.”

1 **§ 13-16-2 DEFINITIONS.**

2 **CITY.** The City of Albuquerque.

3 **DEPARTMENT.** The office of the City Attorney, unless the mayor designates a
4 different city agency.

5 **DOMESTIC PARTNER.** A person with whom another person maintains a
6 household and a mutual committed relationship, without a legally recognized
7 marriage.

8 **EMPLOYEE.** Any person an employer suffers or permits to perform work, or
9 hires with the expectation of performing work, for monetary compensation for
10 at least 56 hours in a year within the municipal limits of the city, **including on a**
11 **part-time, seasonal or temporary basis.**

12 **EMPLOYER.** An EMPLOYER is as defined in Section 13-12-2 of this Code or
13 **any nonprofit organization, partnership, association, corporation, or charitable**
14 **trust** with a physical premises within the City of Albuquerque. EMPLOYER
15 shall not include the State of New Mexico or any employee thereof.

16 **FAMILY MEMBER.** A spouse or domestic partner; a child, sibling, parent,
17 grandparent, grandchild, or legal ward or guardian of the employee or of the
18 employee's spouse or domestic partner (whether of a biological, foster,
19 adoptive or step relationship), and the spouses or domestic partners of these
20 individuals; a person to whom the employee stands or stood in loco parentis;
21 or any other individual related by blood or affinity whose close association
22 with the employee or employee's spouse or domestic partner is the equivalent
23 of a family relationship.

24 **LARGE EMPLOYER.** An employer that is not a small employer as defined
25 herein.

26 **PAID SICK TIME.** Time that is compensated at the same hourly rate and with
27 the same benefits, including health care benefits, as the employee normally

1 earns during hours worked and is provided by an employer to an employee for
2 the purposes described in section 13-16-3 of this article, but in no case shall
3 the hourly wage be less than that provided in Chapter 13, Article 12 of the
4 Albuquerque Code of Ordinances.

5 **SMALL EMPLOYER.** An employer of fewer than forty (40) individual
6 employees. In determining the number of employees, all employees shall be
7 counted whether they are full-time, part-time or temporary employees and
8 whether or not they perform work within the City. When the number of
9 employees fluctuates in any year, the number of employees shall be
10 determined by the number of individuals employed in the previous year.

11 **§ 13-16-3 PAID SICK TIME.**

12 **(A)** An employer shall provide employees accrued paid sick time for: An
13 employee or employee's family member's mental or physical illness, injury or
14 health condition; including medical diagnosis, care, treatment, or recovery; for
15 preventive medical care; for closure of the employee's place of business or
16 family member's school or place of care for public health reasons; or for
17 absence necessary due to domestic violence, sexual assault or stalking
18 suffered by the employee or employee's family member, provided the leave is
19 to obtain medical or psychological treatment, relocate, prepare for or
20 participate in legal proceedings, or obtain related services.

21 **(B)** Employees shall accrue a minimum of one hour of paid sick time for every
22 30 hours worked. Employees of large employers cannot use more than 56
23 hours of paid sick time in a year, and employees of small employers cannot
24 use more than 40 hours of paid sick time in a year, unless the employer's
25 policy provides for a higher limit. Paid sick time shall begin to accrue on the
26 first day of employment. Employees shall be entitled to use accrued paid sick
27 time beginning on the 90th calendar day following the first day of employment
28 or the effective date of this law, whichever is later, unless the employer's
29 policy provides that employees may use accrued time earlier. Employees

1 exempt from overtime requirements under federal and state law will be
2 assumed to work no more than 40 hours in each work week for purposes of
3 paid sick time accrual.

4 (C) Paid sick time shall be carried over to the following year. If an employee is
5 transferred but remains employed by the same employer, or if a successor
6 employer replaces the original employer, or if an employee separates from
7 employment but is rehired by the same employer within 12 months, the
8 employee is entitled to all previously accrued paid sick time, unless it was
9 paid out. An employer may, but is not obligated to, loan paid sick time to an
10 employee in advance of accrual by such employee or pay out unused accrued
11 paid sick time when an employee separates from employment.

12 (D) An employer with a paid leave policy that meets or exceeds the
13 requirements of this Ordinance is not required to provide additional paid sick
14 time or in any way reduce the benefits provided to employees.

15 (E) An employer may require reasonable documentation that paid sick time
16 has been used for a covered purpose only if the employee uses 3 or more
17 consecutive paid sick days. An employer may not require that the
18 documentation explain the nature of any medical condition or the details of
19 the domestic violence, sexual assault, or stalking. All information an employer
20 obtains related to the employee's reasons for taking paid sick time shall be
21 treated as confidential and not disclosed except with the permission of the
22 affected employee. If an employer chooses to require documentation for paid
23 sick time, the employer is responsible for paying all out-of-pocket expenses
24 the employee incurs in obtaining the documentation.

25 § 13-16-4 EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED. An
26 employer shall not intimidate, retaliate, discipline, discharge, suspend, assign
27 to less favorable duties, refuse to hire, reduce pay or hours, refuse to assign
28 additional hours, report an employee or an employee's family member to any
29 law enforcement agency, or take or threaten any adverse action whatsoever

1 against an employee because the employee has exercised rights protected
2 under this Ordinance or has in good faith alleged violations of this Ordinance,
3 whether mistakenly or not. There shall be a rebuttable presumption of a
4 violation of this section whenever an employer takes any adverse action
5 against a person who, within 90 days, exercised rights protected under this
6 Ordinance or has in good faith alleged violations of this Ordinance, whether
7 mistakenly or not. An employer shall not require an employee to find a
8 replacement worker as a condition of using paid sick time or count use of paid
9 sick time in a way that will lead to any adverse employment action.

10 § 13-16-5 NOTICE AND RECORDS. On or before the effective date of this
11 Ordinance, the Department shall make available on its website a summary
12 notice to employees in English and Spanish of each provision of this
13 Ordinance. Employers shall provide this notice to each employee on the first
14 day of employment, and shall post it in a conspicuous place in each
15 establishment where employees are employed. Employers shall maintain
16 payroll records for each employee showing the weekly hours worked, wages
17 paid, and amount of paid sick time accrued or used each pay period, and shall
18 print this information in the written receipt required by NMSA § 50-4-2. All
19 records shall be retained for four years and made available for inspection and
20 copying upon request by the Department or the employee. Failure to maintain
21 records shall give rise to a rebuttable presumption that the employer has
22 violated this Ordinance, and the fact finder may rely on employee's reasonable
23 estimates in calculating damages.

24 § 13-16-6 ENFORCEMENT. The Department shall implement and enforce this
25 article, shall have investigation and inspection authority as provided in 29
26 U.S.C. section 211(a), shall enforce this article on behalf of an aggrieved
27 worker upon receipt of an individual worker complaint and/or on a workplace-
28 wide basis when the investigation reveals a general policy or practice of
29 noncompliance, and shall promulgate appropriate guidelines or rules for such
30 purposes. The Department shall have the power to impose penalties payable

1 to the city for violations of this article and to grant an employee(s) or former
2 employee(s) all appropriate relief. The Department shall maintain confidential
3 the identity of any complainant provided, however, that with the authorization
4 of such person, the Agency may disclose his or her name and identifying
5 information as necessary to enforce this Ordinance or for other appropriate
6 purposes. The Department or any person or any entity a member of which is
7 aggrieved by a violation of this article may bring a civil action individually or
8 as a class action under state law in a court of competent jurisdiction within
9 four years from the date the alleged violation occurred. Upon prevailing, the
10 plaintiff or plaintiffs shall recover all appropriate legal or equitable relief, the
11 costs and expenses of suit and reasonable attorney's fees, and liquidated
12 damages calculated at three times the value of the unpaid sick time accrued;
13 and in the case of retaliation, the plaintiff shall recover actual damages,
14 including but not limited to back pay, and shall have a right to reinstatement
15 or other appropriate relief. Any employer found to be in violation of this article
16 shall also be liable for a civil penalty of fifty dollars per week for each separate
17 violation, not to exceed five hundred dollars per employee.

18 § 13-16-7 RELATIONSHIP TO OTHER REQUIREMENTS.

19 (A) This article shall not be construed as creating or imposing any requirement
20 in conflict with, nor to preempt or otherwise limit or affect the applicability of,
21 any other law, regulation, requirement, policy, or standard that provides for
22 more generous compensation, rights, benefits, or protections. Nothing
23 contained in this article prohibits an employer from establishing more
24 generous policies than those established under this Ordinance.

25 (B) This article shall not be construed to diminish or impair the rights or
26 obligations of an employee or employer under any valid contract, collective
27 bargaining agreement, employment benefit plan or other agreement providing
28 more generous paid sick time to an employee than required herein. Employers
29 subject to this Ordinance may by collective bargaining agreement provide that

1 **this Ordinance shall not apply to employees covered by that collective**
2 **bargaining agreement.**

3 § 13-16-8 SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause,
4 word, or phrase of this Chapter is for any reason held to be invalid or
5 unenforceable by any court of competent jurisdiction or if application thereof
6 to any person or circumstance is judged invalid, such decision shall not affect
7 the validity of the remaining provisions of this Chapter.

8 § 13-16-9 COMPILATION. This Chapter shall, amend, be incorporated in, and
9 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

10 § 13-16-10 EFFECTIVE DATE. This Ordinance takes effect 90 days following
11 the date of enactment or on the date of termination of any collective
12 bargaining agreement.

13 § 13-16-11 AMENDMENT BY CITY COUNCIL. **This Chapter may be amended** by
14 the City Council without a vote of the people as regards the implementation or
15 enforcement thereof, in order to achieve the purposes of this Chapter, **but not**
16 **in a manner that alters the effective date or lessens the substantive**
17 **requirements of this Chapter or its scope of coverage.**