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

SUMMARY OF PROPOSED MEASURE

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

TITLE AND PROPOSED ORDINANCE

An Initiative Ordinance of the City of Albuquerque Amending Title 13 of the Albuquerque Municipal Code to Allow Employees to Accrue and Use Sick Leave; Establishing Procedures for Notice, Recordkeeping, and Enforcement.

WHEREAS, approximately 49% of private sector workers and 77% of part-time workers in Albuquerque lack paid sick time, which compels them to work when they should be recuperating from illness or injury and increases the risk of passing illnesses to others.

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

§ 13-16-1 SHORT TITLE. This article may be cited as "the Albuquerque Healthy Workforce Ordinance."

§ 13-16-2 DEFINITIONS.

CITY. The City of Albuquerque.

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

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

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

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

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

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

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

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

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

§ 13-16-3 PAID SICK TIME.

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

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

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

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

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

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

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

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

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

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

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

§ 13-16-7 RELATIONSHIP TO OTHER REQUIREMENTS.

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

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

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

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

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

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

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