

August 14, 2019

An open letter to the Bernalillo County Commission

Dear Commissioners,

As a free market business advocacy group located in Bernalillo County we have several concerns about the proposed Bernalillo County paid time off ordinance which will soon be voted on by the County Commission. This letter is our attempt to address the myriad problems with the currently-drafted ordinance in detail.

Employment policies including paid vacation and sick leave should be voluntarily negotiated between the employer and employee. Government attempts to micromanage this process lead to serious problems. That said, we call on the Commission to consider the changes below as a means of improving the ordinance and making it somewhat less onerous a burden on local businesses.

- 1) This ordinance does not put any accountability on the County to inform affected businesses, nor does it require administrative relief prior to any legal action that could overburden the already crowded courts. Instead, the ordinance would allow complaints to quickly result in costly legal battles for businesses. It is critical that administrative investigation and enforcement be exhausted before the legal system is engaged in enforcing this mandate.
- 2) Failure to comply with the ordinance as written may result in suspension of business registration and civil penalties. Current language does not require “intent” on behalf of employer, just a finding of failure to comply. Intentions must be considered.
- 3) Applying this ordinance to micro-businesses as small as two employees is a serious problem that will particularly impact startups and other small businesses. Even the federal government’s own guidelines fluctuate in terms of the definition of “small business,” but the Family and Medical Leave Act of 1993 applies to businesses of 50 or more employees. This is the logical threshold for a local ordinance.
- 4) This ordinance should not apply to part-time, seasonal, or temporary workers as these workers traditionally do not receive paid benefits.
- 5) The ordinance is written to address “sick leave” but is now for paid time off. The ordinance now demands that employers provide paid time off to be used by employees for any purpose they choose.

In a typical paid leave system, an employee has to request the time off and the employer can either approve or deny the request. Employers need to control staffing level during certain peak times of business or to meet customer obligations.

Under this ordinance an employee could use paid leave to go golfing on a day where they are critical in the creation of a product for a customer. However the employer cannot deny the usage and according to the ordinance the untimely usage of the paid leave cannot negatively affect the employee (because it will be seen as retaliation). This made sense for an ill employee, but not in the other instances.

6) Collective bargaining is supposed to promote equity, but under this ordinance different job sites within and outside of the unincorporated areas of Bernalillo County will have different benefits. How would this ordinance impact labor unions and their members around our County and State?

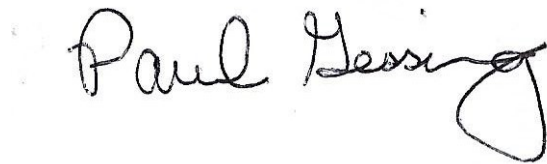
7) Many small business owners have family-like relationships with their employees. They often make exceptions and assist their employees in times of need. The mandates of this ordinance eliminate any flexibility small business employers provide for their employees.

8) In 2019 the Legislature adopted SB 85 which eliminates various domestic labor/service exemptions and affords domestic service workers the same protections under these laws that other workers enjoy. Based on this the County's ordinance seemingly applies to anyone who uses multiple babysitters, domestic care workers, or even cleaning staff. Since the only businesses exempt are those that employ 2 or fewer employees, once you use three babysitters or other domestic help you now have to track and give paid leave. This is a very burdensome requirement and one that could put average New Mexico families in legal jeopardy.

9) Because the ordinance now mandates Paid Time Off rather than Paid Sick leave, the ordinance requires clear guidelines determining if or when an employer is required to pay out the unused time to the employee upon separation.

10) The ordinance purportedly exempts "interns," but not all interns work for an employer in exchange for college credit. Many internships are undertaken by students for minimal pay in order to gain experience in a particular industry. Without a more inclusive definition of "intern," employers who cannot afford this benefit will likely refrain from hiring interns, which will negatively impact students' ability to obtain such opportunities.

Sincerely,

A handwritten signature in black ink that reads "Paul Gessing". The signature is written in a cursive style with a large, looping 'G' at the end.

Paul Gessing
President
Rio Grande Foundation

