

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 1 LABOR GENERAL PROVISIONS
PART 7 CAREGIVER LEAVE

11.1.7.1 ISSUING AGENCY: Labor Relations Division (LRD) of the New Mexico Department of Workforce Solutions (NMDWS).

[11.1.7.1 NMAC – N, 1/01/2026]

11.1.7.2 SCOPE: Employers and employees within the state of New Mexico.

[11.1.7.2 NMAC – N, 1/01/2026]

11.1.7.3 STATUTORY AUTHORITY: Section 50-16-3 NMSA 1978 authorizes the LRD of the NMDWS to promulgate rules to implement the provisions of the Caregiver Leave Act.

[11.1.7.3 NMAC – N, 1/01/2026]

11.1.7.4 DURATION: Permanent.

[11.1.7.4 NMAC – N, 1/01/2026]

11.1.7.5 EFFECTIVE DATE: January 1, 2026, unless a later date is cited at the end of a section.

[11.1.7.5 NMAC – N, 1/01/2026]

11.1.7.6 OBJECTIVE: To implement grievance procedures articulated in Section 50-16-1 NMSA 1978 providing eligible employees recourse for violations of the Caregiver Leave Act.

[11.1.7.6 NMAC – N, 1/01/2026]

11.1.7.7 DEFINITIONS: All definitions contained in Section 50-16-2 NMSA 1978, are incorporated herein by reference. As used in these rules:

A. “eligible employee” means, except as provided pursuant to Section 50-16-4 NMSA 1978, an individual who is in the employ of an employer and who, in accordance with the employer’s policies, is eligible to accrue sick leave;

B. “employer” means a person that employs one or more employees and that offers eligible employees sick leave;

C. “family member” means an individual who is the spouse or domestic partner of or by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, greatgrandchild, brother, sister, niece, nephew, aunt or uncle of an eligible employee; and

D. “sick leave” means a leave of absence from employment for which an employer pays an eligible employee due to illness or injury to receive care from a licensed or certified health professional. “Sick leave” does not include leave to which an employee is entitled under the federal Family and Medical Leave Act of 1993, regardless of whether the employee uses sick leave during that leave.

[11.1.7.7 NMAC – N, 1/01/2026]

11.1.7.8 ACCRUAL AND USAGE

A. An employer that provides eligible employees with sick leave for the employee’s own illness or injury shall permit eligible employees to use this same accumulated leave to care for family members in accordance with the same terms and procedures the employer uses for any other use of sick leave by eligible employees.

B. An eligible employee’s employer shall not discharge or threaten to discharge, demote, suspend, or retaliate or discriminate in any manner, including using the employee’s use of caregiver leave as a factor in the employee’s performance evaluation, against an employee because that employee requests or uses caregiver leave in accordance with the employer’s general sick leave policy, files a complaint with the workforce solutions department for the violation of the Caregiver Leave Act, cooperates in an investigation or prosecution of an alleged violation of the Caregiver Leave Act or opposes any policy or practice established pursuant to the Caregiver Leave Act.

[11.1.7.8 NMAC – N, 1/01/2026]

11.1.7.9 COMPLIANCE MEASURES: Compliance assurance measures available to the LRD include the following:

- A.** Investigations of alleged violations of the Caregiver Leave Act upon complaints filed by individuals;
- B.** Interviews of employers, their managers and employees and any other witness who may have relevant information;
- C.** Requests for production of records and other information from employers;
- D.** Administrative subpoenas for records and other information from employer, or for the taking of depositions from employers, their manager and other potential witnesses;
- E.** Audits of employer records; and
- F.** Education and outreach efforts regarding the requirements of the Caregiver Leave Act.

[11.1.7.9 NMAC – N, 1/01/2026]

11.1.7.10 NOTICE BY EMPLOYERS:

A. Employers shall give written or electronic notice to an employee at the commencement of employment of the employee's rights to earned sick leave; the manner in which sick leave is accrued and calculated; the terms of use of earned sick leave as guaranteed by the Caregiver Leave Act; that retaliation against employees for using sick leave is prohibited; that the employee's right to file a complaint with the LRD if earned sick leave accrual or use is denied or if the employee is retaliated against; and all means of enforcing the Caregiver Leave Act. This notice must be in English, Spanish, or any other language that is the first language spoken by at least ten percent of the employer's workforce, as requested by the employee

B. Employers shall display a poster containing the information required in Section A, above, in a conspicuous and accessible place in each establishment where employees are employed. The poster should be in English, Spanish and in any language that is the first language spoken by at least ten percent of the employer's workforce.

[11.1.7.10 NMAC – N, 1/01/2026]

11.1.7.11 COMPLAINTS: Individuals may file complaints alleging violations of the Caretaker Leave Act or these rules, including retaliation, with the LRD.

A. Complaints must be submitted using a form approved by the LRD.

B. Complainants may complete the form on their own or have an LRD employee assist in completing the form based on the complainant's statements in-person or by telephone. If the LRD provides assistance in completing the form by telephone, it shall mail or email the unsigned form to the complainant to be reviewed, approved, signed, and submitted to the LRD for filing. The complaint form does not need to be notarized. The complainant may attach additional information or documentation supporting the complaint, but this is not a requirement.

C. Upon receipt of the completed complaint form, the LRD will:

(1) Review the complaint to determine whether the LRD has jurisdiction;

(2) Determine if more information is needed from the complainant; and

(3) Interview the complainant, if necessary, to clarify any discrepancies, omissions, or errors in the complaint form, and obtain additional information regarding the complaint.

(4) If a complainant is represented by an attorney, the attorney shall submit a written notice of the representation to the NMDWS of said representation and shall also indicate in that notice whether the NMDWS may communicate with the complainant directly without the attorney being present.

(5) The complaint form will give the complainant the opportunity to choose to correspond with the LRD by email or regular mail. If the complainant does not make a choice, the correspondence with the complainant will be by regular mail.

(6) The LRD shall send complainants written notification summarizing the status of the investigation by complainant's chosen correspondence method no less frequently than every 90 days starting from the date the complaint is received by the LRD.

(7) The LRD shall provide limited English proficient (LEP) complainants, employers and witnesses with free language assistance services according to the NMDWS language access plan throughout the complaint process.

[11.1.7.11 NMAC – N, 1/01/2026]

11.1.7.12 JURISDICTION: The LRD's authority is limited to the enforcement of the laws of the state of New Mexico. The LRD does not have authority to enforce the laws of any other state. The LRD may close a complaint that alleges violations of the Caregiver Leave Act for work performed outside the state of New Mexico, including work performed entirely on tribal land.
[11.1.7.12 NMAC – N, 1/01/2026]

11.1.7.13 DEADLINE FOR FILING A COMPLAINT: All complaints alleging violations of the Caregiver Leave Act must be filed with the LRD within three years of when the last alleged violation occurred. The LRD will accept complaints for investigation in which any portion of the alleged violation falls within the three-year time limit.
[11.1.7.13 NMAC – N, 1/01/2026]

11.1.7.14 CONFIDENTIALITY: The LRD will maintain the complainant's identity as confidential unless disclosure is necessary to facilitate investigation or resolve the complaint or is otherwise required by law.
[11.1.7.14 NMAC – N, 1/01/2026]

11.1.7.15 CLOSURE OF COMPLAINTS: The LRD may close any complaint alleging violations of the Caregiver Leave Act after the initial screening with no further investigation if the LRD determines that it does not have jurisdiction, it is unable to identify complainant's employer after reasonable efforts have been made, or if no portion of the alleged violation falls within a three-year time period. Upon closure, the LRD will send the complainant a letter setting forth the reasons for closure.
[11.1.7.15 NMAC – N, 1/01/2026]

11.1.7.16 NOTICE OF COMPLAINT TO THE EMPLOYER: Within 10 business days of receipt of the complaint, the LRD shall send the employer a copy of the complaint form, any supporting documentation received from the complainant, and a blank response form. The initial letter shall be mailed to the last known address of the employer. The notice to the employer will give the employer the opportunity to choose to receive correspondence from the LRD by email or regular mail, but if the employer does not make a choice, the correspondence will be sent by regular mail.
[11.1.7.16 NMAC – N, 1/01/2026]

11.1.7.17 EMPLOYER REPRESENTATION: If an employer is represented by an attorney at any time during the investigation, the attorney shall submit a written notice to the LRD of representation. This written notice shall indicate whether the LRD may communicate with the employer directly without the attorney being present. Pursuant to Rule 16-402 NMRA, the Office of General Counsel for the NMDWS is not prohibited from communicating directly with employees of an employer, with the exception of persons having a managerial responsibility on behalf of the employer, regarding the subject matter of the representation even though the employer itself is represented by counsel.
[11.1.7.17 NMAC – N, 1/01/2026]

11.1.7.18 RESPONSE BY EMPLOYER: The employer shall respond in writing to the initial letter regarding the complaint within 10 business days of receipt. The employer shall also provide the LRD with true and accurate copies of the records that are required to be maintained with respect to the complainant. The employer shall produce any other record related to the complainant requested by the LRD. The employer may provide other records of its choosing in responding to the complaint, but this is not a requirement. In its discretion, the LRD may grant an employer a reasonable extension to respond to the initial letter if requested by the employer in writing specifically setting forth the good cause upon which the request for an extension is based.
[11.1.7.18 NMAC – N, 1/01/2026]

11.1.7.19 REQUESTS FOR ADDITIONAL INFORMATION: In its discretion, the LRD may interview the employer and other witnesses to obtain additional information relevant to the investigation and may issue an administrative subpoena to compel production of records necessary to conduct the investigation if such records are not voluntarily produced by the employer.
[11.1.7.19 NMAC – N, 1/01/2026]

11.1.7.20 REPLY BY COMPLAINANT: If the employer disputed the alleged violation(s) and submits relevant documentary evidence, the LRD shall allow the complainant an opportunity to submit a written reply to the employer's response along with additional documentation. The complainant has 10 business days from the date of the complainant's receipt of the employer's response to submit the reply. In its discretion, the LRD may interview the complainant and other witnesses to obtain additional information relevant to the investigation.
[11.1.7.20 NMAC – N, 1/01/2026]

11.1.7.21 SETTLEMENT BY PARTIES: At any stage of the investigation, the LRD may schedule a settlement meeting between the parties. The LRD may inform the parties of the preliminary conclusions based on the evidence reviewed, including any amount owed to the complainant for violations of the Caregiver Leave Act, as determined by the LRD. If a settlement is reached, it shall be reduced to writing and signed by the complainant and the employer. After the settlement is signed by both parties, the LRD will close the investigation and advise the parties in writing that the case is closed.
[11.1.7.21 NMAC – N, 1/01/2026]

11.1.7.22 ADMINISTRATIVE DECISION: The LRD shall complete its investigation of a complaint and issue a written decision if a settlement is not reached, or if a settlement is reached but the employer fails to comply with the terms of the settlement, and a party submits a written request to the LRD to reopen prior to the expiration of the three year time limit outlined in NMAC 11.1.7.13. After completing its investigation the LRD shall issue an administrative decision on the complaint. The decision shall:

- A.** be issued within 180 days from the date the complaint was received;
- B.** be in writing and set forth findings of facts and conclusions of law, including a calculation of the amount owed, if any, to complainant; and
- C.** inform the parties that if they disagree with the decision, there is no right of administrative appeal;

[11.1.7.22 NMAC – N, 1/01/2026]

11.1.7.23 EMPLOYER RECORDS: Section 50-17-7 NMSA 1978 requires employers to keep records documenting hours worked by employees and earned sick leave taken by employees for the 48-month period immediately preceding the date the record was created. If the LRD finds, during the course of its investigation, the employer did not maintain and produce the required records or that the records are inaccurate or incomplete, the LRD may base the calculation of the amount owed to complainant on other reasonable, credible evidence, including by not limited to the complainant's estimates.
[11.1.7.23 NMAC – N, 1/01/2026]

11.1.7.24 REOPENING AN INVESTIGATION: A complainant or employer may request in writing a reopening of the investigation of a complaint upon a showing of good cause for doing so. Examples of good cause include, but are not limited to, failure of an employer to comply with the terms of the settlement, or the discovery of new, previously undisclosed evidence that would have changed the result of the previous determination. Except in the case of unfulfilled settlement terms, the LRD's determination of whether good cause to reopen exists is final and shall not be subject to any right of appeal or other review. All requests for reopening must be received by the LRD before the three-year time limit referenced in 11.1.7.13 NMAC expires. Reopening requests received after the three-year period expires will not be considered. Upon reopening, the LRD may pursue any investigatory steps available under the law and pursuant to these regulations and may affirm, modify, or reverse, in whole or in part, any previous decision issued.
[11.1.7.24 NMAC – N, 1/01/2026]

11.1.7.25 STANDARD OPERATING PROCEDURES: The LRD may adopt standard operating procedures to provide additional instructions for its employees in the performance of their duties and responsibilities.
[11.1.7.25 NMAC – N, 1/01/2026]