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HOUSE BILL 619

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Robert M. Burpo

AN ACT

RELATING TO EMPLOYMENT; ENACTING PROVISIONS APPLYING TO INDIAN TRIBES AND THEIR EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-2 NMSA 1978 (being Laws 1979, Chapter 280, Section 11, as amended) is amended to read:

"51-1-2. DEFINITIONS. -- As used in the Unemployment Compensation Law:

A. "department" means the labor department;

B. "division" means the employment security division of the labor department, the director of the division or an employee of the division exercising authority lawfully delegated to the employee by the director; and

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1 C. "secretary" means the secretary of labor or an
2 employee of the department exercising authority lawfully
3 delegated to the employee by the secretary. "

4 Section 2. Section 51-1-42 NMSA 1978 (being Laws 1936
5 (S.S.), Chapter 1, Section 19, as amended by Laws 2000,
6 Chapter 3, Section 4 and also by Laws 2000, Chapter 7, Section
7 4) is amended to read:

8 "51-1-42. DEFINITIONS. --As used in the Unemployment
9 Compensation Law:

10 A. "base period" means the first four of the last
11 five completed calendar quarters immediately preceding the
12 first day of an individual's benefit year;

13 B. "benefits" means the cash unemployment
14 compensation payments payable to an eligible individual
15 pursuant to Section 51-1-4 NMSA 1978 with respect to his weeks
16 of unemployment;

17 C. "contributions" means the money payments
18 required by Section 51-1-9 NMSA 1978 to be made into the fund
19 by an employer on account of having individuals performing
20 services for him;

21 D. "employing unit" means any individual or type
22 of organization, including any partnership, association,
23 cooperative, trust, estate, joint-stock company, agricultural
24 enterprise, insurance company or corporation, whether domestic
25 or foreign, or the receiver, trustee in bankruptcy, trustee or

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1 successor thereof, household, fraternity or club, the legal
2 representative of a deceased person or any state or local
3 government entity to the extent required by law to be covered
4 as an employer, which has in its employ one or more
5 individuals performing services for it within this state. All
6 individuals performing services for any employing unit that
7 maintains two or more separate establishments within this
8 state shall be deemed to be employed by a single employing
9 unit for all the purposes of the Unemployment Compensation
10 Law. Individuals performing services for contractors,
11 subcontractors or agents that are performing work or services
12 for an employing unit, as described in this subsection, which
13 is within the scope of the employing unit's usual trade,
14 occupation, profession or business, shall be deemed to be in
15 the employ of the employing unit for all purposes of the
16 Unemployment Compensation Law unless such contractor,
17 subcontractor or agent is itself an employer within the
18 provisions of Subsection E of this section;

19 E. "employer" includes:

20 (1) any employing unit which:

21 (a) unless otherwise provided in this
22 section, paid for service in employment as defined in
23 Subsection F of this section wages of four hundred fifty
24 dollars (\$450) or more in any calendar quarter in either the
25 current or preceding calendar year or had in employment, as

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1 defined in Subsection F of this section, for some portion of a
2 day in each of twenty different calendar weeks during either
3 the current or the preceding calendar year, and irrespective
4 of whether the same individual was in employment in each such
5 day, at least one individual;

6 (b) for the purposes of Subparagraph
7 (a) of this paragraph, if any week includes both December 31
8 and January 1, the days of that week up to January 1 shall be
9 deemed one calendar week and the days beginning January 1,
10 another such week; and

11 (c) for purposes of defining an
12 "employer" under Subparagraph (a) of this paragraph, the wages
13 or remuneration paid to individuals performing services in
14 employment in agricultural labor or domestic services as
15 provided in Paragraphs (6) and (7) of Subsection F of this
16 section shall not be taken into account; except that any
17 employing unit determined to be an employer of agricultural
18 labor under Paragraph (6) of Subsection F of this section
19 shall be an employer under Subparagraph (a) of this paragraph
20 so long as the employing unit is paying wages or remuneration
21 for services other than agricultural services;

22 (2) any individual or type of organization
23 that acquired the trade or business or substantially all of
24 the assets thereof, of an employing unit that at the time of
25 the acquisition was an employer subject to the Unemployment

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1 Compensation Law; provided that where such an acquisition
2 takes place, the secretary may postpone activating the
3 separate account pursuant to Subsection A of Section 51-1-11
4 NMSA 1978 until such time as the successor employer has
5 employment as defined in Subsection F of this section;

6 (3) any employing unit that acquired all or
7 part of the organization, trade, business or assets of another
8 employing unit and that, if treated as a single unit with such
9 other employing unit or part thereof, would be an employer
10 under Paragraph (1) of this subsection;

11 (4) any employing unit not an employer by
12 reason of any other paragraph of this subsection:

13 (a) for which, within either the
14 current or preceding calendar year, service is or was
15 performed with respect to which such employing unit is liable
16 for any federal tax against which credit may be taken for
17 contributions required to be paid into a state unemployment
18 fund; or

19 (b) which, as a condition for approval
20 of the Unemployment Compensation Law for full tax credit
21 against the tax imposed by the Federal Unemployment Tax Act,
22 is required, pursuant to such act, to be an "employer" under
23 the Unemployment Compensation Law;

24 (5) any employing unit that, having become an
25 employer under Paragraph (1), (2), (3) or (4) of this

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1 subsection, has not, under Section 51-1-18 NMSA 1978, ceased
2 to be an employer subject to the Unemployment Compensation
3 Law;

4 (6) for the effective period of its election
5 pursuant to Section 51-1-18 NMSA 1978, any other employing
6 unit that has elected to become fully subject to the
7 Unemployment Compensation Law; ~~and~~

8 (7) any employing unit for which any services
9 performed in its employ are deemed to be performed in this
10 state pursuant to an election under an arrangement entered
11 into in accordance with Subsection A of Section
12 51-1-50 NMSA 1978; and

13 (8) an Indian tribe as defined in 26 USCA
14 Section 3306(u) for which service in employment is performed;

15 F. "employment" ~~[means]~~:

16 (1) means any service, including service in
17 interstate commerce, performed for wages or under any contract
18 of hire, written or oral, express or implied;

19 (2) means an individual's entire service,
20 performed within or both within and without this state if:

21 (a) the service is primarily localized
22 in this state with services performed outside the state being
23 only incidental thereto; or

24 (b) the service is not localized in any
25 state but some of the service is performed in this state and:

1 1) the base of operations or, if there is no base of
2 operations, the place from which such service is directed or
3 controlled, is in this state; or 2) the base of operations or
4 place from which such service is directed or controlled is not
5 in any state in which some part of the service is performed
6 but the individual's residence is in this state;

7 (3) means services performed within this
8 state but not covered under Paragraph (2) of this subsection
9 if contributions or payments in lieu of contributions are not
10 required and paid with respect to such services under an
11 unemployment compensation law of any other state, the federal
12 government or Canada;

13 (4) means services covered by an election
14 pursuant to Section 51-1-18 NMSA 1978 and services covered by
15 an election duly approved by the secretary in accordance with
16 an arrangement pursuant to Paragraph (1) of Subsection A of
17 Section 51-1-50 NMSA 1978 shall be deemed to be employment
18 during the effective period of such election;

19 (5) means services performed by an individual
20 for an employer for wages or other remuneration unless and
21 until it is established by a preponderance of evidence that:

22 (a) such individual has been and will
23 continue to be free from control or direction over the
24 performance of such services both under his contract of
25 service and in fact;

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1 (b) such service is either outside the
2 usual course of business for which such service is performed
3 or that such service is performed outside of all the places of
4 business of the enterprise for which such service is
5 performed; and

6 (c) such individual is customarily
7 engaged in an independently established trade, occupation,
8 profession or business of the same nature as that involved in
9 the contract of service;

10 (6) means service performed after December
11 31, 1977 by an individual in agricultural labor as defined in
12 Subsection Q of this section if:

13 (a) such service is performed for an
14 employing unit that: 1) paid remuneration in cash of twenty
15 thousand dollars (\$20,000) or more to individuals in such
16 employment during any calendar quarter in either the current
17 or the preceding calendar year; or 2) employed in agricultural
18 labor ten or more individuals for some portion of a day in
19 each of twenty different calendar weeks in either the current
20 or preceding calendar year, whether or not such weeks were
21 consecutive, and regardless of whether such individuals were
22 employed at the same time;

23 (b) such service is not performed
24 before January 1, 1980 by an individual who is an alien
25 admitted to the United States to perform service in

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1 agricultural labor pursuant to Sections 214(c) and 101(15) (H)
2 of the Immigration and Nationality Act; and

3 (c) for purposes of this paragraph, any
4 individual who is a member of a crew furnished by a crew
5 leader to perform service in agricultural labor for a farm
6 operator or other person shall be treated as an employee of
7 such crew leader: 1) if such crew leader meets the
8 requirements of a crew leader as defined in Subsection L of
9 this section; or 2) substantially all the members of such crew
10 operate or maintain mechanized agricultural equipment that is
11 provided by the crew leader; and 3) the individuals performing
12 such services are not, by written agreement or in fact, within
13 the meaning of Paragraph (5) of this subsection, performing
14 services in employment for the farm operator or other person;

15 (7) means service performed after December
16 31, 1977 by an individual in domestic service in a private
17 home, local college club or local chapter of a college
18 fraternity or sorority for a person or organization that paid
19 cash remuneration of one thousand dollars (\$1,000) in any
20 calendar quarter in the current or preceding calendar year to
21 individuals performing such services;

22 (8) means service performed after December
23 31, 1971 by an individual in the employ of a religious,
24 charitable, educational or other organization but only if the
25 following conditions are met:

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1 (a) the service is excluded from
2 "employment" as defined in the Federal Unemployment Tax Act
3 solely by reason of Section 3306(c)(8) of that act; and

4 (b) the organization meets the
5 requirements of "employer" as provided in Subparagraph (a) of
6 Paragraph (1) of Subsection E of this section;

7 (9) means service of an individual who is a
8 citizen of the United States, performed outside the United
9 States, except in Canada, after December 31, 1971 in the
10 employ of an American employer (other than service that is
11 deemed "employment" under the provisions of Paragraph (2) of
12 this subsection or the parallel provisions of another state's
13 law), if:

14 (a) the employer's principal place of
15 business in the United States is located in this state;

16 (b) the employer has no place of
17 business in the United States, but: 1) the employer is an
18 individual who is a resident of this state; 2) the employer is
19 a corporation organized under the laws of this state; or 3)
20 the employer is a partnership or a trust and the number of the
21 partners or trustees who are residents of this state is
22 greater than the number who are residents of any one other
23 state; or

24 (c) none of the criteria of
25 Subparagraphs (a) and (b) of this paragraph are met, but the

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1 employer has elected coverage in this state or, the employer
2 having failed to elect coverage in any state, the individual
3 has filed a claim for benefits, based on such service, under
4 the law of this state.

5 "American employer" for purposes of this paragraph means
6 a person who is: 1) an individual who is a resident of the
7 United States; 2) a partnership if two-thirds or more of the
8 partners are residents of the United States; 3) a trust if all
9 of the trustees are residents of the United States; or 4) a
10 corporation organized under the laws of the United States or
11 of any state. For the purposes of this paragraph, "United
12 States" includes the United States, the District of Columbia,
13 the commonwealth of Puerto Rico and the Virgin Islands;

14 (10) means, notwithstanding any other
15 provisions of this subsection, service with respect to which a
16 tax is required to be paid under any federal law imposing a
17 tax against which credit may be taken for contributions
18 required to be paid into a state unemployment fund or which as
19 a condition for full tax credit against the tax imposed by the
20 Federal Unemployment Tax Act is required to be covered under
21 the Unemployment Compensation Law; and

22 (11) means service performed in the employ of
23 an Indian tribe if:

24 (a) the service is excluded from
25 "employment" as defined in 26 USCA Section 3306(c) solely by

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1 reason of 26 USCA Section 3306(c)(7); and

2 (b) the service is not otherwise
3 excluded from employment pursuant to the Unemployment
4 Compensation Law;

5 [~~(11)~~—"employment"]

6 (12) does not include:

7 (a) service performed in the employ of:

8 1) a church or convention or association of churches; or 2) an
9 organization that is operated primarily for religious purposes
10 and that is operated, supervised, controlled or principally
11 supported by a church or convention or association of
12 churches;

13 (b) service performed by a duly
14 ordained, commissioned or licensed minister of a church in the
15 exercise of his ministry or by a member of a religious order
16 in the exercise of duties required by such order;

17 (c) service performed by an individual
18 in the employ of his son, daughter or spouse, and service
19 performed by a child under the age of majority in the employ
20 of his father or mother;

21 (d) service performed in the employ of
22 the United States government or an instrumentality of the
23 United States immune under the constitution of the United
24 States from the contributions imposed by the Unemployment
25 Compensation Law except that to the extent that the congress

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1 of the United States shall permit states to require any
2 instrumentalities of the United States to make payments into
3 an unemployment fund under a state unemployment compensation
4 act, all of the provisions of the Unemployment Compensation
5 Law shall be applicable to such instrumentalities, and to
6 service performed for such instrumentalities in the same
7 manner, to the same extent and on the same terms as to all
8 other employers, employing units, individuals and services;
9 provided, that if this state shall not be certified for any
10 year by the secretary of labor of the United States under
11 Section 3304 of the federal Internal Revenue Code (26 U. S. C.
12 Section 3304), the payments required of such instrumentalities
13 with respect to such year shall be refunded by the department
14 from the fund in the same manner and within the same period as
15 is provided in Subsection D of Section 51-1-36 NMSA 1978 with
16 respect to contributions erroneously collected;

17 (e) service performed in a facility
18 conducted for the purpose of carrying out a program of
19 rehabilitation for individuals whose earning capacity is
20 impaired by age or physical or mental deficiency or injury or
21 providing remunerative work for individuals who because of
22 their impaired physical or mental capacity cannot be readily
23 absorbed in the competitive labor market, by an individual
24 receiving such rehabilitation or remunerative work;

25 (f) service with respect to which

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1 unemployment compensation is payable under an unemployment
2 compensation system established by an act of congress;

3 (g) service performed in the employ of
4 a foreign government, including service as a consular or other
5 officer or employee or a nondiplomatic representative;

6 (h) service performed by an individual
7 for a person as an insurance agent or as an insurance
8 solicitor, if all such service performed by such individual
9 for such person is performed for remuneration solely by way of
10 commi ssi on;

11 (i) service performed by an individual
12 under the age of eighteen in the delivery or distribution of
13 newspapers or shopping news, not including delivery or
14 distribution to any point for subsequent delivery or
15 distribution;

16 (j) service covered by an election duly
17 approved by the agency charged with the administration of any
18 other state or federal unemployment compensation law, in
19 accordance with an arrangement pursuant to Paragraph (1) of
20 Subsection A of Section 51-1-50 NMSA 1978 during the effective
21 period of such election;

22 (k) service performed, as part of an
23 unemployment work-relief or work-training program assisted or
24 financed in whole or part by any federal agency or an agency
25 of a state or political subdivision thereof, by an individual

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1 receiving such work relief or work training;

2 (l) service performed by an individual
3 who is enrolled at a nonprofit or public educational
4 institution that normally maintains a regular faculty and
5 curriculum and normally has a regularly organized body of
6 students in attendance at the place where its educational
7 activities are carried on as a student in a full-time program,
8 taken for credit at the institution that combines academic
9 instruction with work experience, if the service is an
10 integral part of such program and the institution has so
11 certified to the employer, except that this subparagraph shall
12 not apply to service performed in a program established for or
13 on behalf of an employer or group of employers;

14 (m) service performed in the employ of
15 a hospital, if the service is performed by a patient of the
16 hospital, or services performed by an inmate of a custodial or
17 penal institution for any employer;

18 (n) service performed by real estate
19 salesmen for others when the services are performed for
20 remuneration solely by way of commission;

21 (o) service performed in the employ of
22 a school, college or university if such service is performed
23 by a student who is enrolled and is regularly attending
24 classes at such school, college or university;

25 (p) service performed by an individual

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1 for a fixed or contract fee officiating at a sporting event
2 that is conducted by or under the auspices of a nonprofit or
3 governmental entity if that person is not otherwise an
4 employee of the entity conducting the sporting event;

5 (q) service performed for a private,
6 for-profit person or entity by an individual as a product
7 demonstrator or product merchandiser if the service is
8 performed pursuant to a written contract between that
9 individual and a person or entity whose principal business is
10 obtaining the services of product demonstrators and product
11 merchandisers for third parties, for demonstration and
12 merchandising purposes and the individual: 1) is compensated
13 for each job or the compensation is based on factors related
14 to the work performed; 2) provides the equipment used to
15 perform the service, unless special equipment is required and
16 provided by the manufacturer through an agency; 3) is
17 responsible for completion of a specific job and for any
18 failure to complete the job; 4) pays all expenses, and the
19 opportunity for profit or loss rests solely with the
20 individual; and 5) is responsible for operating costs, fuel,
21 repairs and motor vehicle insurance. For the purpose of this
22 subparagraph, "product demonstrator" means an individual who,
23 on a temporary, part-time basis, demonstrates or gives away
24 samples of a food or other product as part of an advertising
25 or sales promotion for the product and who is not otherwise

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1 employed directly by the manufacturer, distributor or
2 retailer, and "product merchandiser" means an individual who,
3 on a temporary, part-time basis builds or resets a product
4 display and who is not otherwise directly employed by the
5 manufacturer, distributor or retailer; or

6 (r) service performed for a private,
7 for-profit person or entity by an individual as a landman if
8 substantially all remuneration paid in cash or otherwise for
9 the performance of the services is directly related to the
10 completion by the individual of the specific tasks contracted
11 for rather than to the number of hours worked by the
12 individual. For the purposes of this subparagraph, "landman"
13 means a land professional who has been engaged primarily in:
14 1) negotiating for the acquisition or divestiture of mineral
15 rights; 2) negotiating business agreements that provide for
16 the exploration for or development of minerals; 3) determining
17 ownership of minerals through the research of public and
18 private records; and 4) reviewing the status of title, curing
19 title defects and otherwise reducing title risk associated
20 with ownership of minerals; managing rights or obligations
21 derived from ownership of interests and minerals; or utilizing
22 or pooling of interest in minerals; and

23 [~~(12)~~] (13) for the purposes of this
24 subsection, if the services performed during one-half or more
25 of any pay period by an individual for the person employing

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1 him constitute employment, all the services of such individual
2 for such period shall be deemed to be employment but, if the
3 services performed during more than one-half of any such pay
4 period by an individual for the person employing him do not
5 constitute employment, then none of the services of such
6 individual for such period shall be deemed to be employment.
7 As used in this paragraph, the term "pay period" means a
8 period, of not more than thirty-one consecutive days, for
9 which a payment of remuneration is ordinarily made to the
10 individual by the person employing him. This paragraph shall
11 not be applicable with respect to services performed in a pay
12 period by an individual for the person employing him where any
13 of such service is excepted by Subparagraph (f) of Paragraph
14 [~~(11)~~] (12) of this subsection;

15 G. "employment office" means a free public
16 employment office, or branch thereof, operated by this state
17 or maintained as a part of a state-controlled system of public
18 employment offices;

19 H. "fund" means the unemployment compensation fund
20 established by the Unemployment Compensation Law to which all
21 contributions and payments in lieu of contributions required
22 under the Unemployment Compensation Law and from which all
23 benefits provided under the Unemployment Compensation Law
24 shall be paid;

25 I. "unemployment" means, with respect to an

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1 individual, any week during which he performs no services and
2 with respect to which no wages are payable to him and during
3 which he is not engaged in self-employment or receives an
4 award of back pay for loss of employment. The secretary shall
5 prescribe by regulation what constitutes part-time and
6 intermittent employment, partial employment and the conditions
7 under which individuals engaged in such employment are
8 eligible for partial unemployment benefits;

9 J. "state", when used in reference to any state
10 other than New Mexico, includes, in addition to the states of
11 the United States, the District of Columbia, the commonwealth
12 of Puerto Rico and the Virgin Islands;

13 K. "unemployment compensation administration fund"
14 means the fund established by Subsection A of Section 51-1-34
15 NMSA 1978 from which administrative expenses under the
16 Unemployment Compensation Law shall be paid. "Employment
17 security department fund" means the fund established by
18 Subsection B of Section 51-1-34 NMSA 1978 from which certain
19 administrative expenses under the Unemployment Compensation
20 Law shall be paid;

21 L. "crew leader" means a person who:

22 (1) holds a valid certificate of registration
23 as a crew leader or farm labor contractor under the Migrant
24 and Seasonal Agricultural Worker Protection Act;

25 (2) furnishes individuals to perform services

1 in agricultural labor for any other person;

2 (3) pays, either on his own behalf or on
3 behalf of such other person, the individuals so furnished by
4 him for service in agricultural labor; and

5 (4) has not entered into a written agreement
6 with the other person for whom he furnishes individuals in
7 agricultural labor that such individuals will be the employees
8 of the other person;

9 M. "week" means such period of seven consecutive
10 days, as the secretary may by regulation prescribe. The
11 secretary may by regulation prescribe that a week shall be
12 deemed to be "in", "within" or "during" the benefit year that
13 includes the greater part of such week;

14 N. "calendar quarter" means the period of three
15 consecutive calendar months ending on March 31, June 30,
16 September 30 or December 31;

17 O. "insured work" means services performed for
18 employers who are covered under the Unemployment Compensation
19 Law;

20 P. "benefit year" with respect to any individual
21 means the one-year period beginning with the first day of the
22 first week of unemployment with respect to which the
23 individual first files a claim for benefits in accordance with
24 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
25 one-year period beginning with the first day of the first week

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1 of unemployment with respect to which the individual next
2 files such a claim for benefits after the termination of his
3 last preceding benefit year; provided that at the time of
4 filing such a claim the individual has been paid the wages
5 required under Paragraph (5) of Subsection A of Section 51-1-5
6 NMSA 1978;

7 Q. "agricultural labor" includes all services
8 performed:

9 (1) on a farm, in the employ of any person,
10 in connection with cultivating the soil or in connection with
11 raising or harvesting any agricultural or horticultural
12 commodity, including the raising, shearing, feeding, caring
13 for, training and management of livestock, bees, poultry and
14 fur-bearing animals and wildlife;

15 (2) in the employ of the owner or tenant or
16 other operator of a farm, in connection with the operation,
17 management, conservation or maintenance of such farm and its
18 tools and equipment, if the major part of such service is
19 performed on a farm;

20 (3) in connection with the operation or
21 maintenance of ditches, canals, reservoirs or waterways used
22 exclusively for supplying and storing water for farming
23 purposes when such ditches, canals, reservoirs or waterways
24 are owned and operated by the farmers using the water stored
25 or carried therein; and

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1 (4) in handling, planting, drying, packing,
2 packaging, processing, freezing, grading, storing or delivery
3 to storage or to market or to a carrier for transportation to
4 market any agricultural or horticultural commodity but only if
5 such service is performed as an incident to ordinary farming
6 operations. The provisions of this paragraph shall not be
7 deemed to be applicable with respect to service performed in
8 connection with commercial canning or commercial freezing or
9 in connection with any agricultural or horticultural commodity
10 after its delivery to a terminal market for distribution for
11 consumption.

12 As used in this subsection, the term "farm" includes
13 stock, dairy, poultry, fruit, fur-bearing animal and truck
14 farms, plantations, ranches, nurseries, greenhouses, ranges
15 and orchards;

16 R. "payments in lieu of contributions" means the
17 money payments made into the fund by an employer pursuant to
18 the provisions of Subsection A of Section 51-1-13 NMSA 1978;

19 S. "department" means the labor department; and

20 T. "wages" means all remuneration for services,
21 including commissions and bonuses and the cash value of all
22 remuneration in any medium other than cash. The reasonable
23 cash value of remuneration in any medium other than cash shall
24 be established and determined in accordance with regulations
25 prescribed by the secretary; provided that the term "wages"

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1 shall not include:

2 (1) subsequent to December 31, 1977, that
3 part of the remuneration in excess of the base wage as
4 determined by the secretary for each calendar year. The base
5 wage upon which contribution shall be paid during any calendar
6 year shall be sixty percent of the state's average annual
7 earnings computed by the division by dividing total wages
8 reported to the division by contributing employers for the
9 second preceding calendar year before the calendar year the
10 computed base wage becomes effective by the average annual
11 employment reported by contributing employers for the same
12 period rounded to the next higher multiple of one hundred
13 dollars (\$100); provided that the base wage so computed for
14 any calendar year shall not be less than seven thousand
15 dollars (\$7,000). Wages paid by an employer to an individual
16 in his employ during any calendar year in excess of the base
17 wage in effect for that calendar year shall be reported to the
18 department but shall be exempt from the payment of
19 contributions unless such wages paid in excess of the base
20 wage become subject to tax under a federal law imposing a tax
21 against which credit may be taken for contributions required
22 to be paid into a state unemployment fund;

23 (2) the amount of any payment with respect to
24 services performed after June 30, 1941 to or on behalf of an
25 individual in its employ under a plan or system established by

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1 an employing unit that makes provision for individuals in its
2 employ generally or for a class or classes of such
3 individuals, including any amount paid by an employing unit
4 for insurance or annuities, or into a fund, to provide for any
5 such payment, on account of:

6 (a) retirement if such payments are
7 made by an employer to or on behalf of any employee under a
8 simplified employee pension plan that provides for payments by
9 an employer in addition to the salary or other remuneration
10 normally payable to such employee or class of such employees
11 and does not include any payments that represent deferred
12 compensation or other reduction of an employee's normal
13 taxable wages or remuneration or any payments made to a third
14 party on behalf of an employee as part of an agreement of
15 deferred remuneration;

16 (b) sickness or accident disability if
17 such payments are received under a workers' compensation or
18 occupational disease disablement law;

19 (c) medical and hospitalization
20 expenses in connection with sickness or accident disability;
21 or

22 (d) death; provided the individual in
23 its employ has not the option to receive, instead of provision
24 for such death benefit, any part of such payment, or, if such
25 death benefit is insured, any part of the premiums or

1 contributions to premiums paid by his employing unit and has
2 not the right under the provisions of the plan or system or
3 policy of insurance providing for such death benefit to assign
4 such benefit, or to receive a cash consideration in lieu of
5 such benefit either upon his withdrawal from the plan or
6 system providing for such benefit or upon termination of such
7 plan or system or policy of insurance or of his service with
8 such employing unit;

9 (3) remuneration for agricultural labor paid
10 in any medium other than cash;

11 (4) any payment made to, or on behalf of, an
12 employee or an employee's beneficiary under a cafeteria plan
13 within the meaning of Section 125 of the federal Internal
14 Revenue Code of 1986;

15 (5) any payment made, or benefit furnished to
16 or for the benefit of an employee if at the time of such
17 payment or such furnishing it is reasonable to believe that
18 the employee will be able to exclude such payment or benefit
19 from income under Section 129 of the federal Internal Revenue
20 Code of 1986;

21 (6) any payment made by an employer to a
22 survivor or the estate of a former employee after the calendar
23 year in which such employee died;

24 (7) any payment made to, or on behalf of, an
25 employee or his beneficiary under an arrangement to which

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1 Section 408(p) of the federal Internal Revenue Code of 1986
2 applies, other than any elective contributions under Paragraph
3 (2)(A)(i) of that section;

4 (8) any payment made to or for the benefit of
5 an employee if at the time of such payment it is reasonable to
6 believe that the employee will be able to exclude such payment
7 from income under Section 106 of the federal Internal Revenue
8 Code of 1986; or

9 (9) the value of any meals or lodging
10 furnished by or on behalf of the employer if at the time such
11 benefit is provided it is reasonable to believe that the
12 employee will be able to exclude such items from income under
13 Section 119 of the federal Internal Revenue Code of 1986. "

14 Section 3. A new section of the Unemployment
15 Compensation Law is enacted to read:

16 "[NEW MATERIAL] COVERAGE OF INDIAN TRIBES--
17 CONTRIBUTIONS--TERMS OF COVERAGE. --

18 A. Benefits based on service in employment of an
19 Indian tribe shall be payable in the same amount, on the same
20 terms and subject to the same conditions as benefits payable
21 on the basis of other service in employment for other
22 employers pursuant to the Unemployment Compensation Law.

23 B. An Indian tribe, tribal unit or a subdivision,
24 subsidiary or business enterprise wholly owned by the tribe
25 shall pay contributions in the same manner and under the same

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1 conditions as other employers unless it elects to pay into a
2 state unemployment fund as reimbursement amounts equal to the
3 amounts of benefits attributable to service in the employ of
4 the tribe, unit, subdivision, subsidiary or enterprise, in
5 which case:

6 (1) the tribe shall determine if
7 reimbursement for benefits paid will be elected by the tribe
8 as a whole, by individual tribal units, subdivisions,
9 subsidiaries or enterprises or by a combination of the
10 specified tribal entities;

11 (2) the electing entity shall make the
12 election in the same manner and under the same conditions as
13 provided for a nonprofit organization pursuant to Section
14 51-1-13 NMSA 1978;

15 (3) the electing entity shall be billed for
16 the full amount of benefits attributable to service in the
17 employ of the electing entity on the same schedule as other
18 employing units that have elected to make payments in lieu of
19 contributions; and

20 (4) the electing entity shall not be subject
21 to the bonding requirements of Paragraphs (3), (4), (5) and
22 (6) of Subsection C of Section 51-1-13 NMSA 1978.

23 C. If a tribe or a tribal entity making payments
24 on a contributing basis pursuant to Subsection B of this
25 section fails to file a required report or make a required

1 payment pursuant to the Unemployment Compensation Law, the
2 division shall mail a notice of failure to report or payment
3 delinquency to the noncomplying tribe or tribal entity at its
4 last known address as shown in division records. If
5 compliance by filing the report or making the payment is not
6 made within ninety days of the date the notice is mailed, the
7 account of the noncomplying tribe or tribal entity shall be
8 terminated. Notice of the termination shall be mailed to the
9 tribe or tribal entity at its last known address shown in
10 division records. The notice shall be accompanied by a
11 written description of protest rights pursuant to Section 51-
12 1-8 NMSA 1978. Termination of an account pursuant to this
13 subsection terminates the tribe or tribal entity's
14 participation as a contributing employer.

15 D. The secretary may reinstate the account of a
16 tribe or tribal entity that loses coverage pursuant to
17 Subsection C of this section if the tribe or the tribal entity
18 files all delinquent reports and pays all contributions,
19 payments in lieu of contributions, interest, penalties,
20 surcharges and fees that are due and owing.

21 E. The secretary shall notify the federal internal
22 revenue service and the federal department of labor of a
23 termination or reinstatement made pursuant to this section.

24 F. Failure of a tribe or tribal entity to make
25 payments in lieu of contributions, interest, penalties,

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1 surcharges and fees within ninety days of the due date for
2 payment will cause the tribe or tribal entity to lose the
3 option to make payments in lieu of contributions for the
4 following tax year unless payment in full is received before
5 January 1 of that year. Having lost that option, a tribe or
6 tribal entity may have it reinstated if, after a period of one
7 year from the termination of the option, the tribe or tribal
8 entity has made all contribution payments and no
9 contributions, payments in lieu of contributions for benefits
10 paid, interest, penalties, surcharges or fees remain
11 outstanding.

12 G. Notices of payment and reporting delinquency to
13 a tribe or a tribal entity shall include an explanation that
14 failure to make full payment within the prescribed time will
15 cause the tribe or the tribal entity to:

16 (1) be liable for taxes pursuant to the
17 Federal Unemployment Tax Act;

18 (2) lose the option to make payments in lieu
19 of contributions; and

20 (3) lose its status as an employer under the
21 Unemployment Compensation Law and the loss of services in the
22 employ of a tribe or a tribal entity as employment under that
23 law.

24 H. Extended benefits paid that are attributable to
25 service in the employ of an Indian tribe and not reimbursed by

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1 the federal government shall be financed in their entirety by
2 the Indian tribe. "

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