

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 619

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

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

C. "secretary" means the secretary of labor or an

1 employee of the department exercising authority lawfully
2 delegated to the employee by the secretary. "

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

7 "51-1-42. DEFINITIONS. --As used in the Unemployment
8 Compensation Law:

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

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

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

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

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

18 E. "employer" includes:

19 (1) any employing unit which:

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

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1 day in each of twenty different calendar weeks during either
2 the current or the preceding calendar year, and irrespective
3 of whether the same individual was in employment in each such
4 day, at least one individual;

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

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

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

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

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

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

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

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

23 (5) any employing unit that, having become an
 24 employer under Paragraph (1), (2), (3) or (4) of this
 25 subsection, has not, under Section 51-1-18 NMSA 1978, ceased

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1 to be an employer subject to the Unemployment Compensation
2 Law;

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

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

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

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

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

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

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

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

25 1) the base of operations or, if there is no base of

1 operations, the place from which such service is directed or
 2 controlled, is in this state; or 2) the base of operations or
 3 place from which such service is directed or controlled is not
 4 in any state in which some part of the service is performed
 5 but the individual's residence is in this state;

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

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

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

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

25 (b) such service is either outside the

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

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

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

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

22 (b) such service is not performed
23 before January 1, 1980 by an individual who is an alien
24 admitted to the United States to perform service in
25 agricultural labor pursuant to Sections 214(c) and 101(15)(H)

1 of the Immigration and Nationality Act; and

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

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

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

25 (a) the service is excluded from

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

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

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

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

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

23 (c) none of the criteria of
24 Subparagraphs (a) and (b) of this paragraph are met, but the
25 employer has elected coverage in this state or, the employer

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

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

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

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

23 (a) the service is excluded from
 24 "employment" as defined in 26 USCA Section 3306(c) solely by
 25 reason of 26 USCA Section 3306(c)(7); and

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

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

24 (f) service with respect to which
25 unemployment compensation is payable under an unemployment

1 compensation system established by an act of congress;

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

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

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

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

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

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

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

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

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

24 (p) service performed by an individual
25 for a fixed or contract fee officiating at a sporting event

1 that is conducted by or under the auspices of a nonprofit or
2 governmental entity if that person is not otherwise an
3 employee of the entity conducting the sporting event;

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

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

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

22 [~~(12)~~] (13) for the purposes of this
 23 subsection, if the services performed during one-half or more
 24 of any pay period by an individual for the person employing
 25 him constitute employment, all the services of such individual

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

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

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

24 I. "unemployment" means, with respect to an
25 individual, any week during which he performs no services and

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

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

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

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

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

24 (2) furnishes individuals to perform services
25 in agricultural labor for any other person;

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underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

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

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

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

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

25 (4) in handling, planting, drying, packing,

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

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

15 R. "payments in lieu of contributions" means the
16 money payments made into the fund by an employer pursuant to
17 the provisions of Subsection A of Section 51-1-13 NMSA 1978 or
18 Subsection E of Section 51-1-59 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"

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, Section 51-1-59 NMSA 1978, is enacted to
16 read:

17 "51-1-59. [NEW MATERIAL] COVERAGE OF INDIAN TRIBES.--

18 A. The legislature finds that:

19 (1) the state of New Mexico recognizes and
20 respects the Indian tribes and pueblos as governments that
21 possess the inherent right of self-government;

22 (2) under the Federal Unemployment Tax Act,
23 federal law now expressly exempts Indian tribes and requires
24 that state law provide that an Indian tribe may elect to make
25 contributions for employment or make reimbursable payments in

1 lieu of contributions; and

2 (3) in order to comply with the change in
3 federal law, state law must be amended to provide for the
4 treatment of Indian tribes under the state unemployment
5 insurance system.

6 B. Benefits based on service in employment of an
7 Indian tribe, tribal unit or a subdivision, subsidiary or
8 business enterprise wholly owned by a tribe shall be payable
9 in the same amount, on the same terms and subject to the same
10 conditions as benefits payable on the basis of other service
11 in employment for other employers pursuant to the Unemployment
12 Compensation Law.

13 C. An Indian tribe, tribal unit or a subdivision,
14 subsidiary or business enterprise wholly owned by a tribe may
15 make contributions in the same manner and under the same
16 conditions as other employers or may elect to reimburse the
17 fund with payments equal to the amounts of benefits
18 attributable to service in the employ of the tribe, unit,
19 subdivision, subsidiary or enterprise.

20 D. If an Indian tribe, tribal unit or a
21 subdivision, subsidiary or business enterprise wholly owned by
22 a tribe elects to make payments in lieu of contributions, the
23 following provisions shall apply:

24 (1) as used in this section, "electing
25 entity" means a tribe, tribal unit or a subdivision,

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1 subsidiary or business enterprise, wholly owned by a tribe,
2 that elects to make payments in lieu of contributions. The
3 tribe as a whole may be an electing entity or an individual
4 tribal unit, subdivision, subsidiary or enterprise, or a
5 combination of these may be electing entities;

6 (2) an electing entity may elect to make
7 payments in lieu of contributions by filing a written notice
8 of its election with the division not later than thirty days
9 prior to the beginning of the taxable year for which its
10 election shall first be effective; except that, if an election
11 is made prior to July 1, 2001, at the option of the electing
12 entity the election shall be deemed to be effective December
13 21, 2000 or January 1, 2001; and

14 (3) once an election is made, payments in
15 lieu of contributions will be used by the electing entity for
16 the following two taxable years.

17 E. The following provisions apply to payments in
18 lieu of contributions made by an electing entity:

19 (1) at the end of each calendar quarter, the
20 division shall bill each electing entity for an amount
21 calculated pursuant to this subsection; except that, in
22 calculating the initial payments due for an electing entity
23 that has made an election prior to July 1, 2001, the secretary
24 shall bill the electing entity for the period elapsed since
25 December 21, 2000;

1 (2) each calendar quarter, each electing
2 entity making payments in lieu of contributions shall pay to
3 the division an amount equal to twenty-five percent of the
4 total benefit charges made to the electing entity during the
5 four calendar quarters ending the preceding June 30. The due
6 date for the payments shall be the tenth day of the first
7 month of each calendar quarter;

8 (3) in the event that an electing entity
9 making payments in lieu of contributions incurred no benefit
10 charges during the four calendar quarters ending the preceding
11 June 30, the electing entity shall pay to the division, each
12 calendar quarter, an amount equal to one-eighth of one percent
13 of the electing entity's annual taxable wages paid for such
14 period for employment as estimated by the secretary. The due
15 date for the payments shall be the tenth day of the first
16 month of the calendar quarter;

17 (4) for each calendar quarter, the secretary
18 shall determine the amount paid by each electing entity
19 subject to payment in lieu of contributions and the amount of
20 benefits charged to the electing entity's account; provided
21 that an electing entity shall not be relieved of charges for
22 benefits paid to an individual who was separated from the
23 employ of that electing entity for any reason. Each electing
24 entity who has made payments in an amount less than the amount
25 of benefits charged to the electing entity's account shall pay

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1 the balance of the amount charged within twenty-five days of
2 the notification by the division. If the quarterly payment
3 made by an electing entity pursuant to Paragraph (2) or (3) of
4 this subsection exceeds the amount of benefits charged to the
5 electing entity's account, the excess payment shall be
6 refunded on a quarterly basis;

7 (5) payments made by an electing entity
8 pursuant to the provisions of this subsection shall not be
9 deducted or deductible, in whole or in part, from the
10 remuneration of individuals in the employ of the electing
11 entity;

12 (6) two or more electing entities may file a
13 joint application for the establishment of a group account for
14 the purpose of sharing the cost of benefits paid that are
15 attributable to service in the employ of the entities. The
16 application shall identify and authorize a group
17 representative to act as the group's agent for the purpose of
18 this paragraph. Upon its approval of the application, the
19 division shall establish a group account for the electing
20 entities effective as of the beginning of the calendar quarter
21 in which it receives the application and shall notify the
22 group's representative of the effective date of the account.
23 The account shall remain in effect for not less than two years
24 and thereafter until terminated at the discretion of the
25 secretary or upon application by the group. Each group

1 account shall be liable for the prepayment of payments in lieu
 2 of contributions as provided in Paragraphs (2), (3) and (4) of
 3 this subsection. Each member of the group account shall be
 4 liable to the division for payments in lieu of contributions
 5 with respect to each calendar quarter in the amount that bears
 6 the same ratio to the total benefits paid in the quarter that
 7 are attributable to service performed in the employ of all
 8 members of the group as the total wages paid for service in
 9 employment for such member during the quarter bear to the
 10 total wages paid during the quarter for service performed in
 11 the employ of all members of the group. The secretary shall
 12 prescribe rules as he deems necessary with respect to
 13 applications for establishment, maintenance and termination of
 14 group accounts that are authorized by this paragraph, for
 15 addition of new members to, and withdrawal of active members
 16 from, the accounts and for the determination of the amounts
 17 that are payable under this subsection by members of the group
 18 and the time and manner of payments. Each group account may
 19 apportion liability for amounts due to the group
 20 representative as the group shall determine; and

21 (7) past-due payments in lieu of
 22 contributions are subject to the same penalties that are
 23 applied to past-due contributions under Section 51-1-12 NMSA
 24 1978.

25 F. Contributions or payments in lieu of

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1 contributions unpaid on the date on which they are due and
2 payable shall bear interest at the rate of one percent per
3 month from and after such date until payment is received by
4 the division. Interest collected pursuant to this subsection
5 shall be paid into the employment security department fund.

6 G. Any person, group of individuals, partnership
7 or employing unit that acquires the organization, trade or
8 business or substantially all the assets thereof from an
9 Indian tribe or tribal entity shall notify the division in
10 writing by registered mail not later than five days prior to
11 the acquisition. Unless such notice is given, such
12 acquisition shall be void as against the division, if, at the
13 time of the acquisition, any contributions or payments in lieu
14 of contributions are due and unpaid by the tribe or tribal
15 entity, and the assets so acquired shall, if otherwise allowed
16 by law, be subject to attachment for the debt.

17 H. If an Indian tribe or a tribal entity fails to
18 make a contribution or payment in lieu of contribution
19 pursuant to the Unemployment Compensation Law, the division
20 shall mail a notice of nonpayment or delinquency to the
21 noncomplying tribe or tribal entity at its last known address
22 as shown in division records. If the payment is not made
23 within ninety days of the date the notice is mailed, the
24 account of the noncomplying tribe or tribal entity shall be
25 terminated. Notice of the termination shall be mailed to the

1 tribe or tribal entity at its last known address shown in
2 division records. The notice shall be accompanied by a
3 written description of protest rights pursuant to Section
4 51-1-8 NMSA 1978. Termination of an account pursuant to this
5 subsection terminates the tribe or tribal entity's
6 participation as a contributing employer.

7 I. The secretary may reinstate the account of an
8 Indian tribe or tribal entity that loses coverage pursuant to
9 Subsection H of this section if the tribe or the tribal entity
10 pays all contributions, payments in lieu of contributions,
11 interest, penalties, surcharges and fees that are due and
12 owing.

13 J. If an Indian tribe or tribal entity fails to
14 make contributions or payments in lieu of contributions
15 pursuant to this section, including any assessed interest and
16 penalties, within ninety days of a notice of nonpayment or
17 delinquency, the secretary shall immediately notify the United
18 States internal revenue service and the United States
19 department of labor.

20 K. Notices of payment and reporting delinquency to
21 an Indian tribe or a tribal entity shall include an
22 explanation that failure to make full payment within the
23 prescribed time will cause the tribe or the tribal entity to:

24 (1) be liable for taxes pursuant to the
25 Federal Unemployment Tax Act;

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

3 (3) lose its status as an employer under the
4 Unemployment Compensation Law and will cause services
5 performed for the tribe or tribal entity to not be treated as
6 "employment" under that law.

7 L. Extended benefits paid that are attributable to
8 service in the employ of an Indian tribe or tribal entity and
9 not reimbursed by the federal government shall be the
10 responsibility of the Indian tribe or tribal entity.

11 M Nothing in this section shall be deemed to be a
12 waiver of tribal sovereignty or sovereign immunity, either
13 directly or indirectly. Compliance by an Indian tribe or
14 tribal entity with the provisions of this section shall not be
15 deemed to directly or indirectly waive tribal sovereignty or
16 sovereign immunity. "

17 Section 4. TEMPORARY PROVISION--TRANSITION.--The labor
18 department shall waive any unpaid contributions, including
19 interest and penalties, from an Indian tribe, tribal unit or a
20 subdivision, subsidiary or business enterprise wholly owned by
21 a tribe due between January 1, 2000 and December 21, 2000 if,
22 before January 31, 2004, the tribe, tribal unit or
23 subdivision, subsidiary or business enterprise pays to the
24 unemployment compensation fund an amount equal to the total
25 benefits actually paid from the fund between January 1, 2000

1 and December 21, 2000 to the employees of that tribe, tribal
2 unit or subdivision, subsidiary or business enterprise.

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underscored material = new
[bracketed material] = delete

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