

SENATE INDIAN AND CULTURAL AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 788

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

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, Chapter
6 3, Section 4 and also by Laws 2000, Chapter 7, Section 4) is
7 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 of
22 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

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 individuals
5 performing services for it within this state. All individuals
6 performing services for any employing unit that maintains two
7 or more separate establishments within this state shall be
8 deemed to be employed by a single employing unit for all the
9 purposes of the Unemployment Compensation Law. Individuals
10 performing services for contractors, subcontractors or agents
11 that are performing work or services for an employing unit, as
12 described in this subsection, which is within the scope of the
13 employing unit's usual trade, occupation, profession or
14 business, shall be deemed to be in the employ of the employing
15 unit for all purposes of the Unemployment Compensation Law
16 unless such contractor, subcontractor or agent is itself an
17 employer within the 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 of
3 whether the same individual was in employment in each such day,
4 at least one individual;

5 (b) for the purposes of Subparagraph (a)
6 of this paragraph, if any week includes both December 31 and
7 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 shall
18 be an employer under Subparagraph (a) of this paragraph so long
19 as the employing unit is paying wages or remuneration for
20 services other than agricultural services;

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

1 place, the secretary may postpone activating the separate
2 account pursuant to Subsection A of Section 51-1-11 NMSA 1978
3 until such time as the successor employer has employment as
4 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 current
13 or preceding calendar year, service is or was performed with
14 respect to which such employing unit is liable for any federal
15 tax against which credit may be taken for contributions
16 required to be paid into a state unemployment fund; or

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

22 (5) any employing unit that, having become an
23 employer under Paragraph (1), (2), (3) or (4) of this
24 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to
25 be an employer subject to the Unemployment Compensation Law;

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

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

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

12 F. "employment" ~~means~~:

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

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

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

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

23 1) the base of operations or, if there is no base of
24 operations, the place from which such service is directed or
25 controlled, is in this state; or 2) the base of operations or

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

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

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

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

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

23 (b) such service is either outside the
 24 usual course of business for which such service is performed or
 25 that such service is performed outside of all the places of

1 business of the enterprise for which such service is performed;
2 and

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

7 (6) means service performed after December 31,
8 1977 by an individual in agricultural labor as defined in
9 Subsection Q of this section if:

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

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

25 (c) for purposes of this paragraph, any

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

12 (7) means service performed after December 31,
 13 1977 by an individual in domestic service in a private home,
 14 local college club or local chapter of a college fraternity or
 15 sorority for a person or organization that paid cash
 16 remuneration of one thousand dollars (\$1,000) in any calendar
 17 quarter in the current or preceding calendar year to
 18 individuals performing such services;

19 (8) means service performed after December 31,
 20 1971 by an individual in the employ of a religious, charitable,
 21 educational or other organization but only if the following
 22 conditions are met:

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

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

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

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

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

20 (c) none of the criteria of
21 Subparagraphs (a) and (b) of this paragraph are met, but the
22 employer has elected coverage in this state or, the employer
23 having failed to elect coverage in any state, the individual
24 has filed a claim for benefits, based on such service, under
25 the law of this state.

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

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

18 (11) means service performed in the employ of
 19 an Indian tribe if:

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

23 (b) the service is not otherwise
 24 excluded from employment pursuant to the Unemployment
 25 Compensation Law;

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1 [~~(11)~~—"employment"]

2 (12) does not include:

3 (a) service performed in the employ of:

4 1) a church or convention or association of churches; or 2) an
5 organization that is operated primarily for religious purposes
6 and that is operated, supervised, controlled or principally
7 supported by a church or convention or association of churches;

8 (b) service performed by a duly
9 ordained, commissioned or licensed minister of a church in the
10 exercise of his ministry or by a member of a religious order in
11 the exercise of duties required by such order;

12 (c) service performed by an individual
13 in the employ of his son, daughter or spouse, and service
14 performed by a child under the age of majority in the employ of
15 his father or mother;

16 (d) service performed in the employ of
17 the United States government or an instrumentality of the
18 United States immune under the constitution of the United
19 States from the contributions imposed by the Unemployment
20 Compensation Law except that to the extent that the congress of
21 the United States shall permit states to require any
22 instrumentalities of the United States to make payments into an
23 unemployment fund under a state unemployment compensation act,
24 all of the provisions of the Unemployment Compensation Law
25 shall be applicable to such instrumentalities, and to service

underscored material = new
[bracketed material] = del ete

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

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

20 (f) service with respect to which
21 unemployment compensation is payable under an unemployment
22 compensation system established by an act of congress;

23 (g) service performed in the employ of a
24 foreign government, including service as a consular or other
25 officer or employee or a nondiplomatic representative;

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1 (h) service performed by an individual
2 for a person as an insurance agent or as an insurance
3 solicitor, if all such service performed by such individual for
4 such person is performed for remuneration solely by way of
5 commi ssi on;

6 (i) service performed by an individual
7 under the age of eighteen in the delivery or distribution of
8 newspapers or shopping news, not including delivery or
9 distribution to any point for subsequent delivery or
10 distribution;

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

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

22 (l) service performed by an individual
23 who is enrolled at a nonprofit or public educational
24 institution that normally maintains a regular faculty and
25 curriculum and normally has a regularly organized body of

1 students in attendance at the place where its educational
2 activities are carried on as a student in a full-time program,
3 taken for credit at the institution that combines academic
4 instruction with work experience, if the service is an integral
5 part of such program and the institution has so certified to
6 the employer, except that this subparagraph shall not apply to
7 service performed in a program established for or on behalf of
8 an employer or group of employers;

9 (m) service performed in the employ of a
10 hospital, if the service is performed by a patient of the
11 hospital, or services performed by an inmate of a custodial or
12 penal institution for any employer;

13 (n) service performed by real estate
14 salesmen for others when the services are performed for
15 remuneration solely by way of commission;

16 (o) service performed in the employ of a
17 school, college or university if such service is performed by a
18 student who is enrolled and is regularly attending classes at
19 such school, college or university;

20 (p) service performed by an individual
21 for a fixed or contract fee officiating at a sporting event
22 that is conducted by or under the auspices of a nonprofit or
23 governmental entity if that person is not otherwise an employee
24 of the entity conducting the sporting event;

25 (q) service performed for a private,

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

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

17 ~~[(12)]~~ (13) for the purposes of this
18 subsection, if the services performed during one-half or more
19 of any pay period by an individual for the person employing him
20 constitute employment, all the services of such individual for
21 such period shall be deemed to be employment but, if the
22 services performed during more than one-half of any such pay
23 period by an individual for the person employing him do not
24 constitute employment, then none of the services of such
25 individual for such period shall be deemed to be employment.

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1 As used in this paragraph, the term "pay period" means a
2 period, of not more than thirty-one consecutive days, for which
3 a payment of remuneration is ordinarily made to the individual
4 by the person employing him. This paragraph shall not be
5 applicable with respect to services performed in a pay period
6 by an individual for the person employing him where any of such
7 service is excepted by Subparagraph (f) of Paragraph [~~(11)~~]
8 (12) of this subsection;

9 G. "employment office" means a free public
10 employment office, or branch thereof, operated by this state or
11 maintained as a part of a state-controlled system of public
12 employment offices;

13 H. "fund" means the unemployment compensation fund
14 established by the Unemployment Compensation Law to which all
15 contributions and payments in lieu of contributions required
16 under the Unemployment Compensation Law and from which all
17 benefits provided under the Unemployment Compensation Law shall
18 be paid;

19 I. "unemployment" means, with respect to an
20 individual, any week during which he performs no services and
21 with respect to which no wages are payable to him and during
22 which he is not engaged in self-employment or receives an award
23 of back pay for loss of employment. The secretary shall
24 prescribe by regulation what constitutes part-time and
25 intermittent employment, partial employment and the conditions

1 under which individuals engaged in such employment are eligible
2 for partial unemployment benefits;

3 J. "state", when used in reference to any state
4 other than New Mexico, includes, in addition to the states of
5 the United States, the District of Columbia, the commonwealth
6 of Puerto Rico and the Virgin Islands;

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

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

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

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

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

24 (4) has not entered into a written agreement
25 with the other person for whom he furnishes individuals in

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1 agricultural labor that such individuals will be the employees
2 of the other person;

3 M. "week" means such period of seven consecutive
4 days, as the secretary may by regulation prescribe. The
5 secretary may by regulation prescribe that a week shall be
6 deemed to be "in", "within" or "during" the benefit year that
7 includes the greater part of such week;

8 N. "calendar quarter" means the period of three
9 consecutive calendar months ending on March 31, June 30,
10 September 30 or December 31;

11 O. "insured work" means services performed for
12 employers who are covered under the Unemployment Compensation
13 Law;

14 P. "benefit year" with respect to any individual
15 means the one-year period beginning with the first day of the
16 first week of unemployment with respect to which the individual
17 first files a claim for benefits in accordance with Subsection
18 A of Section 51-1-8 NMSA 1978 and thereafter the one-year
19 period beginning with the first day of the first week of
20 unemployment with respect to which the individual next files
21 such a claim for benefits after the termination of his last
22 preceding benefit year; provided that at the time of filing
23 such a claim the individual has been paid the wages required
24 under Paragraph (5) of Subsection A of Section 51-1-5 NMSA
25 1978;

1 Q. "agricultural labor" includes all services
2 performed:

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

9 (2) in the employ of the owner or tenant or
10 other operator of a farm, in connection with the operation,
11 management, conservation or maintenance of such farm and its
12 tools and equipment, if the major part of such service is
13 performed on a farm;

14 (3) in connection with the operation or
15 maintenance of ditches, canals, reservoirs or waterways used
16 exclusively for supplying and storing water for farming
17 purposes when such ditches, canals, reservoirs or waterways are
18 owned and operated by the farmers using the water stored or
19 carried therein; and

20 (4) in handling, planting, drying, packing,
21 packaging, processing, freezing, grading, storing or delivery
22 to storage or to market or to a carrier for transportation to
23 market any agricultural or horticultural commodity but only if
24 such service is performed as an incident to ordinary farming
25 operations. The provisions of this paragraph shall not be

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1 deemed to be applicable with respect to service performed in
2 connection with commercial canning or commercial freezing or in
3 connection with any agricultural or horticultural commodity
4 after its delivery to a terminal market for distribution for
5 consumption.

6 As used in this subsection, the term "farm" includes
7 stock, dairy, poultry, fruit, fur-bearing animal and truck
8 farms, plantations, ranches, nurseries, greenhouses, ranges and
9 orchards;

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

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

15 T. "wages" means all remuneration for services,
16 including commissions and bonuses and the cash value of all
17 remuneration in any medium other than cash. The reasonable
18 cash value of remuneration in any medium other than cash shall
19 be established and determined in accordance with regulations
20 prescribed by the secretary; provided that the term "wages"
21 shall not include:

22 (1) subsequent to December 31, 1977, that part
23 of the remuneration in excess of the base wage as determined by
24 the secretary for each calendar year. The base wage upon which
25 contribution shall be paid during any calendar year shall be

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

18 (2) the amount of any payment with respect to
19 services performed after June 30, 1941 to or on behalf of an
20 individual in its employ under a plan or system established by
21 an employing unit that makes provision for individuals in its
22 employ generally or for a class or classes of such individuals,
23 including any amount paid by an employing unit for insurance or
24 annuities, or into a fund, to provide for any such payment, on
25 account of:

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

11 (b) sickness or accident disability if
12 such payments are received under a workers' compensation or
13 occupational disease disablement law;

14 (c) medical and hospitalization expenses
15 in connection with sickness or accident disability; or

16 (d) death; provided the individual in
17 its employ has not the option to receive, instead of provision
18 for such death benefit, any part of such payment, or, if such
19 death benefit is insured, any part of the premiums or
20 contributions to premiums paid by his employing unit and has
21 not the right under the provisions of the plan or system or
22 policy of insurance providing for such death benefit to assign
23 such benefit, or to receive a cash consideration in lieu of
24 such benefit either upon his withdrawal from the plan or system
25 providing for such benefit or upon termination of such plan or

1 system or policy of insurance or of his service with such
2 employing unit;

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

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

9 (5) any payment made, or benefit furnished to
10 or for the benefit of an employee if at the time of such
11 payment or such furnishing it is reasonable to believe that the
12 employee will be able to exclude such payment or benefit from
13 income under Section 129 of the federal Internal Revenue Code
14 of 1986;

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

18 (7) any payment made to, or on behalf of, an
19 employee or his beneficiary under an arrangement to which
20 Section 408(p) of the federal Internal Revenue Code of 1986
21 applies, other than any elective contributions under Paragraph
22 (2)(A)(i) of that section;

23 (8) any payment made to or for the benefit of
24 an employee if at the time of such payment it is reasonable to
25 believe that the employee will be able to exclude such payment

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1 from income under Section 106 of the federal Internal Revenue
2 Code of 1986; or

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

8 Section 3. A new section of the Unemployment Compensation
9 Law, Section 51-1-59 NMSA 1978, is enacted to read:

10 "51-1-59. [NEW MATERIAL] COVERAGE OF INDIAN TRIBES. --

11 A. The legislature finds that:

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

15 (2) under the Federal Unemployment Tax Act,
16 federal law now expressly exempts Indian tribes and requires
17 that state law provide that an Indian tribe may elect to make
18 contributions for employment or make reimbursable payments in
19 lieu of contributions; and

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

24 B. Benefits based on service in employment of an
25 Indian tribe, tribal unit or a subdivision, subsidiary or

1 business enterprise wholly owned by a tribe shall be payable in
2 the same amount, on the same terms and subject to the same
3 conditions as benefits payable on the basis of other service in
4 employment for other employers pursuant to the Unemployment
5 Compensation Law.

6 C. An Indian tribe, tribal unit or a subdivision,
7 subsidiary or business enterprise wholly owned by a tribe may
8 make contributions in the same manner and under the same
9 conditions as other employers or may elect to reimburse the
10 fund with payments equal to the amounts of benefits
11 attributable to service in the employ of the tribe, unit,
12 subdivision, subsidiary or enterprise.

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

17 (1) as used in this section, "electing entity"
18 means a tribe, tribal unit or a subdivision, subsidiary or
19 business enterprise, wholly owned by a tribe, that elects to
20 make payments in lieu of contributions. The tribe as a whole
21 may be an electing entity or an individual tribal unit,
22 subdivision, subsidiary or enterprise, or a combination of
23 these may be electing entities;

24 (2) an electing entity may elect to make
25 payments in lieu of contributions by filing a written notice of

1 its election with the division not later than thirty days prior
2 to the beginning of the taxable year for which its election
3 shall first be effective; except that, if an election is made
4 prior to July 1, 2001, at the option of the electing entity,
5 the election shall be deemed to be effective December 21, 2000
6 or January 1, 2001; and

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

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

12 (1) at the end of each calendar quarter, the
13 division shall bill each electing entity for an amount
14 calculated pursuant to this subsection; except that, in
15 calculating the initial payments due for an electing entity
16 that has made an election prior to July 1, 2001, the secretary
17 shall bill the electing entity for the period elapsed since
18 December 21, 2000;

19 (2) each calendar quarter, each electing
20 entity making payments in lieu of contributions shall pay to
21 the division an amount equal to twenty-five percent of the
22 total benefit charges made to the electing entity during the
23 four calendar quarters ending the preceding June 30. The due
24 date for the payments shall be the tenth day of the first month
25 of each calendar quarter;

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

10 (4) for each calendar quarter, the secretary
11 shall determine the amount paid by each electing entity subject
12 to payment in lieu of contributions and the amount of benefits
13 charged to the electing entity's account; provided that an
14 electing entity shall not be relieved of charges for benefits
15 paid to an individual who was separated from the employ of that
16 electing entity for any reason. Each electing entity who has
17 made payments in an amount less than the amount of benefits
18 charged to the electing entity's account shall pay the balance
19 of the amount charged within twenty-five days of the
20 notification by the division. If the quarterly payment made by
21 an electing entity pursuant to Paragraph (2) or (3) of this
22 subsection exceeds the amount of benefits charged to the
23 electing entity's account, the excess payment shall be refunded
24 on a quarterly basis;

25 (5) payments made by an electing entity

1 pursuant to the provisions of this subsection shall not be
2 deducted or deductible, in whole or in part, from the
3 remuneration of individuals in the employ of the electing
4 entity;

5 (6) two or more electing entities may file a
6 joint application for the establishment of a group account for
7 the purpose of sharing the cost of benefits paid that are
8 attributable to service in the employ of the entities. The
9 application shall identify and authorize a group representative
10 to act as the group's agent for the purpose of this paragraph.
11 Upon its approval of the application, the division shall
12 establish a group account for the electing entities effective
13 as of the beginning of the calendar quarter in which it
14 receives the application and shall notify the group's
15 representative of the effective date of the account. The
16 account shall remain in effect for not less than two years and
17 thereafter until terminated at the discretion of the secretary
18 or upon application by the group. Each group account shall be
19 liable for the prepayment of payments in lieu of contributions
20 as provided in Paragraphs (2), (3) and (4) of this subsection.
21 Each member of the group account shall be liable to the
22 division for payments in lieu of contributions with respect to
23 each calendar quarter in the amount that bears the same ratio
24 to the total benefits paid in the quarter that are attributable
25 to service performed in the employ of all members of the group

1 as the total wages paid for service in employment for such
 2 member during the quarter bear to the total wages paid during
 3 the quarter for service performed in the employ of all members
 4 of the group. The secretary shall prescribe rules as he deems
 5 necessary with respect to applications for establishment,
 6 maintenance and termination of group accounts that are
 7 authorized by this paragraph, for addition of new members to,
 8 and withdrawal of active members from, the accounts and for the
 9 determination of the amounts that are payable under this
 10 subsection by members of the group and the time and manner of
 11 payments. Each group account may apportion liability for
 12 amounts due to the group representative as the group shall
 13 determine; and

14 (7) past-due payments in lieu of contributions
 15 are subject to the same penalties that are applied to past-due
 16 contributions under Section 51-1-12 NMSA 1978.

17 F. Contributions or payments in lieu of
 18 contributions unpaid on the date on which they are due and
 19 payable shall bear interest at the rate of one percent per
 20 month from and after such date until payment is received by the
 21 division. Interest collected pursuant to this subsection shall
 22 be paid into the employment security department fund.

23 G. Any person, group of individuals, partnership or
 24 employing unit that acquires the organization, trade or
 25 business or substantially all the assets thereof from an Indian

1 tribe or tribal entity shall notify the division in writing by
2 registered mail not later than five days prior to the
3 acquisition. Unless such notice is given, such acquisition
4 shall be void as against the division, if, at the time of the
5 acquisition, any contributions or payments in lieu of
6 contributions are due and unpaid by the tribe or tribal entity,
7 and the assets so acquired shall, if otherwise allowed by law,
8 be subject to attachment for the debt.

9 H. If an Indian tribe or a tribal entity fails to
10 make a contribution or payment in lieu of contribution pursuant
11 to the Unemployment Compensation Law, the division shall mail a
12 notice of nonpayment or delinquency to the noncomplying tribe
13 or tribal entity at its last known address as shown in division
14 records. If the payment is not made within ninety days of the
15 date the notice is mailed, the account of the noncomplying
16 tribe or tribal entity shall be terminated. Notice of the
17 termination shall be mailed to the tribe or tribal entity at
18 its last known address shown in division records. The notice
19 shall be accompanied by a written description of protest rights
20 pursuant to Section 51-1-8 NMSA 1978. Termination of an
21 account pursuant to this subsection terminates the tribe or
22 tribal entity's participation as a contributing employer.

23 I. The secretary may reinstate the account of an
24 Indian tribe or tribal entity that loses coverage pursuant to
25 Subsection H of this section if the tribe or the tribal entity

1 pays all contributions, payments in lieu of contributions,
2 interest, penalties, surcharges and fees that are due and
3 owing.

4 J. If an Indian tribe or tribal entity fails to
5 make contributions or payments in lieu of contributions
6 pursuant to this section, including any assessed interest and
7 penalties, within ninety days of a notice of nonpayment or
8 delinquency, the secretary shall immediately notify the United
9 States internal revenue service and the United States
10 department of labor.

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

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

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

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

23 L. Extended benefits paid that are attributable to
24 service in the employ of an Indian tribe or tribal entity and
25 not reimbursed by the federal government shall be the

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1 responsibility of the Indian tribe or tribal entity.

2 M Nothing in this section shall be deemed to be a
3 waiver of tribal sovereignty or sovereign immunity, either
4 directly or indirectly. Compliance by an Indian tribe or
5 tribal entity with the provisions of this section shall not be
6 deemed to directly or indirectly waive tribal sovereignty or
7 sovereign immunity. "

8 Section 4. TEMPORARY PROVISION--TRANSITION. --

9 A. The labor department shall waive any unpaid
10 contributions, including interest and penalties, from an Indian
11 tribe, tribal unit or a subdivision, subsidiary or business
12 enterprise wholly owned by a tribe due between January 1, 2000
13 and December 21, 2000 if, before January 31, 2004, the tribe,
14 tribal unit or subdivision, subsidiary or business enterprise
15 pays to the unemployment compensation fund an amount equal to
16 the total benefits actually paid from the fund between January
17 1, 2000 and December 21, 2000 to the employees of that tribe,
18 tribal unit or subdivision, subsidiary or business enterprise.

19 B. Any amount of the contributions made between
20 January 1, 1997 and December 21, 2000 by an Indian tribe,
21 tribal unit or a subdivision, subsidiary or business enterprise
22 wholly owned by a tribe in excess of the benefits charged
23 during that period to the account of that tribe, tribal unit,
24 subdivision, subsidiary or business enterprise shall be
25 credited against any amount otherwise due pursuant to

1 Subsection E of Section 51-1-59 NMSA 1978.

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underscoring material = new
[bracketed material] = deleted