AN ACT

RELATING TO EMPLOYMENT; AMENDING A SECTION OF CHAPTER 50, ARTICLE 4 NMSA 1978 AND A SECTION OF THE MINIMUM WAGE ACT TO REMOVE THE EXCEPTION OF DOMESTIC SERVICE FROM WAGE PROTECTIONS.

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

SECTION 1. Section 50-4-1 NMSA 1978 (being Laws 1937, Chapter 109, Section 1) is amended to read:

"50-4-1. DEFINITIONS.--Whenever used in Sections 50-4-1 through 50-4-12 NMSA 1978:

A. "employer" includes every person, firm, partnership, association, corporation, receiver or other officer of the court of this state and any agent or officer of any of the above-mentioned classes employing any person in this state, except employers of livestock and agricultural labor; and

B. "wages" means all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece or commission basis or other method of calculating such amount."

SECTION 2. Section 50-4-21 NMSA 1978 (being Laws 1955, Chapter 200, Section 2, as amended) is amended to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:
A. "employ" includes suffer or permit to work;
B. "employer" includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 50-4-22 NMSA 1978, "employer" includes the state or any political subdivision of the state; and
C. "employee" includes an individual employed by an employer, but shall not include:
   (1) an individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;
   (2) an individual employed by the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 50-4-22 NMSA 1978, "employee" includes an individual employed by the state or any political subdivision of the state;
   (3) an individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does
not, in fact, exist or where the services rendered to such
organizations are on a voluntary basis. The
employer-employee relationship shall not be deemed to exist
with respect to an individual being served for purposes of
rehabilitation by a charitable or nonprofit organization,
notwithstanding the payment to the individual of a stipend
based upon the value of the work performed by the individual;

(4) salespersons or employees compensated
upon piecework, flat rate schedules or commission basis;

(5) students regularly enrolled in primary
or secondary schools working after school hours or on
vacation;

(6) registered apprentices and learners
otherwise provided by law;

(7) persons eighteen years of age or under
who are not students in a primary, secondary, vocational or
training school;

(8) persons eighteen years of age or under
who are not graduates of a secondary school;

(9) G.I. bill trainees while under training;

(10) seasonal employees of an employer
obtaining and holding a valid certificate issued annually by
the director of the labor relations division of the workforce
solutions department. The certificate shall state the job
designations and total number of employees to be exempted.

SB 85
Page 3
In approving or disapproving an application for a certificate of exemption, the director shall consider the following:

(a) whether such employment shall be at an educational, charitable or religious youth camp or retreat;

(b) that such employment will be of a temporary nature;

(c) that the individual will be furnished room and board in connection with such employment, or if the camp or retreat is a day camp or retreat, the individual will be furnished board in connection with such employment;

(d) the purposes for which the camp or retreat is operated;

(e) the job classifications for the positions to be exempted; and

(f) any other factors that the director deems necessary to consider;

(11) any employee employed in agriculture:

(a) if the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred person-days of agricultural labor;

(b) if the employee is the parent, spouse, child or other member of the employer's immediate
family; for the purpose of this subsection, the employer
shall include the principal stockholder of a family
corporation;

(c) if the employee: 1) is employed as
a hand-harvest laborer and is paid on a piece-rate basis in
an operation that has been, and is customarily and generally
recognized as having been, paid on a piece-rate basis in the
region of employment; 2) commutes daily from the employee's
permanent residence to the farm on which the employee is so
employed; and 3) has been employed in agriculture less than
thirteen weeks during the preceding calendar year;

(d) if the employee, other than an
employee described in Subparagraph (c) of this paragraph:
1) is sixteen years of age or under and is employed as a
hand-harvest laborer, is paid on a piece-rate basis in an
operation that has been, and is generally recognized as
having been, paid on a piece-rate basis in the region of
employment; 2) is employed on the same farm as the employee's
parent or person standing in the place of the parent; and
3) is paid at the same piece-rate as employees over age
sixteen are paid on the same farm; or

(e) if the employee is principally
engaged in the range production of livestock or in milk
production;

(12) an employee engaged in the handling,
drying, packing, packaging, processing, freezing or canning
of any agricultural or horticultural commodity in its
unmanufactured state; or

(13) employees of charitable, religious or
nonprofit organizations who reside on the premises of group
homes operated by such charitable, religious or nonprofit
organizations for persons who have a mental, emotional or
developmental disability."