

1 HOUSE BILL 148

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Christine Chandler

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9  
10 AN ACT

11 RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING A TEMPORARY  
12 ADDITION TO THE CONTRIBUTION RATE OF CONTRIBUTING EMPLOYERS AND  
13 A TEMPORARY INCREASE TO THE BASE WAGE FOR WHICH EMPLOYER  
14 CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND ARE MADE;  
15 MAKING AN APPROPRIATION.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 51-1-11 NMSA 1978 (being Laws 2013,  
19 Chapter 133, Section 3, as amended) is amended to read:

20 "51-1-11. EMPLOYER CONTRIBUTION RATES--BENEFITS  
21 CHARGEABLE--UNEMPLOYMENT COMPENSATION FUND ADEQUATE RESERVE--  
22 RESERVE FACTOR--EXCESS CLAIMS PREMIUM--DEFINITIONS.--

23 A. Benefits paid to an individual shall be charged to  
24 the individual's base-period employers on a pro rata basis  
25 according to the proportion of the individual's total base-

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1 period wages received from each employer, except that no  
2 benefits paid to a claimant as extended benefits under the  
3 provisions of Section 51-1-48 NMSA 1978 shall be charged to any  
4 base-period employer who is not on a reimbursable basis and who  
5 is not a governmental entity and, except as the secretary shall  
6 by rule prescribe otherwise, in the case of benefits paid to an  
7 individual who:

8 (1) left the employ of a base-period employer  
9 who is not on a reimbursable basis voluntarily without good  
10 cause in connection with the individual's employment;

11 (2) was discharged from the employment of a  
12 base-period employer who is not on a reimbursable basis for  
13 misconduct connected with the individual's employment;

14 (3) is employed part time by a base-period  
15 employer who is not on a reimbursable basis and who continues  
16 to furnish the individual the same part-time work while the  
17 individual is separated from full-time work for a  
18 nondisqualifying reason; or

19 (4) received benefits based upon wages earned  
20 from a base-period employer who is not on a reimbursable basis  
21 while attending approved training under the provisions of  
22 Subsection E of Section 51-1-5 NMSA 1978.

23 B. The division shall not charge a contributing or  
24 reimbursing base-period employer with any portion of benefit  
25 amounts that the division can bill to or recover from the

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1 federal government as either regular or extended benefits.

2 C. The division shall not charge a contributing base-  
3 period employer with any portion of benefits paid to an  
4 individual for dependent allowance or because the individual to  
5 whom benefits are paid:

6 (1) separated from employment due to domestic  
7 abuse, as "domestic abuse" is defined in Section 40-13-2 NMSA  
8 1978; or

9 (2) voluntarily left work to relocate because of  
10 a spouse, who is in the military service of the United States  
11 or the New Mexico national guard, receiving permanent change of  
12 station orders, activation orders or unit deployment orders.

13 D. All contributions to the fund shall be pooled and  
14 available to pay benefits to any individual entitled thereto,  
15 irrespective of the source of the contributions.

16 E. In the case of a transfer of an employing  
17 enterprise, notwithstanding any other provision of law, the  
18 experience history of the transferred enterprise shall be  
19 transferred from the predecessor employer to the successor  
20 under the following conditions and in accordance with the  
21 applicable rules of the secretary:

22 (1) except as otherwise provided in this  
23 subsection, for the purpose of this subsection, two or more  
24 employers who are parties to or the subject of any transaction  
25 involving the transfer of an employing enterprise shall be

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1 deemed to be a single employer and the experience history of  
2 the employing enterprise shall be transferred to the successor  
3 employer if the successor employer has acquired by the  
4 transaction all of the business enterprises of the predecessor;  
5 provided that:

6 (a) all contributions, interest and  
7 penalties due from the predecessor employer have been paid;

8 (b) notice of the transfer has been given in  
9 accordance with the rules of the secretary during the calendar  
10 year of the transaction transferring the employing enterprise  
11 or the date of the actual transfer of control and operation of  
12 the employing enterprise;

13 (c) the successor shall notify the division  
14 of the acquisition on or before the due date of the successor's  
15 first wage and contribution report. If the successor employer  
16 fails to notify the division of the acquisition within this  
17 time limit, the division, when it receives actual notice, shall  
18 effect the transfer of the experience history and applicable  
19 rate of contribution retroactively to the date of the  
20 acquisition, and the successor shall pay a penalty of fifty  
21 dollars (\$50.00); and

22 (d) where the transaction involves only a  
23 merger, consolidation or other form of reorganization without a  
24 substantial change in the ownership and controlling interest of  
25 the business entity, as determined by the secretary, the

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1 limitations on transfers stated in Subparagraphs (a), (b) and  
2 (c) of this paragraph shall not apply. A party to a merger,  
3 consolidation or other form of reorganization described in this  
4 subparagraph shall not be relieved of liability for any  
5 contributions, interest or penalties due and owing from the  
6 employing enterprise at the time of the merger, consolidation  
7 or other form of reorganization;

8 (2) the applicable experience history may be  
9 transferred to the successor in the case of a partial transfer  
10 of an employing enterprise if the successor has acquired one or  
11 more of the several employing enterprises of a predecessor but  
12 not all of the employing enterprises of the predecessor and  
13 each employing enterprise so acquired was operated by the  
14 predecessor as a separate store, factory, shop or other  
15 separate employing enterprise and the predecessor, throughout  
16 the entire period of the contribution with liability applicable  
17 to each enterprise transferred, has maintained and preserved  
18 payroll records that, together with records of contribution  
19 liability and benefit chargeability, can be separated by the  
20 parties from the enterprises retained by the predecessor to the  
21 satisfaction of the secretary or the secretary's delegate. A  
22 partial experience history transfer will be made only if the  
23 successor:

24 (a) notifies the division of the  
25 acquisition, in writing, not later than the due date of the

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1 successor's first quarterly wage and contribution report after  
2 the effective date of the acquisition;

3 (b) files an application provided by the  
4 division that contains the endorsement of the predecessor  
5 within thirty days from the delivery or mailing of such  
6 application by the division to the successor's last known  
7 address; and

8 (c) files with the application a form with a  
9 schedule of the name and social security number of and the  
10 wages paid to and the contributions paid for each employee for  
11 the three and one-half-year period preceding the computation  
12 date through the date of transfer or such lesser period as the  
13 enterprises transferred may have been in operation. The  
14 application and form shall be supported by the predecessor's  
15 permanent employment records, which shall be available for  
16 audit by the division. The application and form shall be  
17 reviewed by the division and, upon approval, the percentage of  
18 the predecessor's experience history attributable to the  
19 enterprises transferred shall be transferred to the successor.  
20 The percentage shall be obtained by dividing the taxable  
21 payrolls of the transferred enterprises for such three and one-  
22 half-year period preceding the date of computation or such  
23 lesser period as the enterprises transferred may have been in  
24 operation by the predecessor's entire payroll;

25 (3) if, at the time of a transfer of an

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1 employing enterprise in whole or in part, both the predecessor  
2 and the successor are under common ownership, then the  
3 experience history attributable to the transferred business  
4 shall also be transferred to and combined with the experience  
5 history attributable to the successor employer. The rates of  
6 both employers shall be recalculated and made effective  
7 immediately upon the date of the transfer;

8 (4) whenever a person, who is not currently an  
9 employer, acquires the trade or business of an employing  
10 enterprise, the experience history of the acquired business  
11 shall not be transferred to the successor if the secretary or  
12 the secretary's designee finds that the successor acquired the  
13 business solely or primarily for the purpose of obtaining a  
14 lower rate of contributions. Instead, the successor shall be  
15 assigned the applicable new employer rate pursuant to this  
16 section. In determining whether the business was acquired  
17 solely or primarily for the purpose of obtaining a lower rate  
18 of contribution, the secretary or the secretary's designee  
19 shall consider:

- 20 (a) the cost of acquiring the business;  
21 (b) whether the person continued the  
22 business enterprise of the acquired business;  
23 (c) how long such business enterprise was  
24 continued; and  
25 (d) whether a substantial number of new

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1 employees was hired for performance of duties unrelated to  
2 those that the business activity conducted prior to  
3 acquisition;

4 (5) if, following a transfer of experience  
5 history pursuant to this subsection, the department determines  
6 that a substantial purpose of the transfer of the employing  
7 enterprise was to obtain a reduced liability for contributions,  
8 then the experience rating accounts of the employers involved  
9 shall be combined into a single account and a single rate  
10 assigned to the combined account;

11 (6) the secretary shall adopt such rules as are  
12 necessary to interpret and carry out the provisions of this  
13 subsection, including rules that:

14 (a) describe how experience history is to be  
15 transferred; and

16 (b) establish procedures to identify the  
17 type of transfer or acquisition of an employing enterprise; and

18 (7) a person who knowingly violates or attempts  
19 to violate a rule adopted pursuant to Paragraph (6) of this  
20 subsection, who transfers or acquires, or attempts to transfer  
21 or acquire, an employing enterprise for the sole or primary  
22 purpose of obtaining a reduced liability for contributions or  
23 who knowingly advises another person to violate a rule adopted  
24 pursuant to Paragraph (6) of this subsection or to transfer or  
25 acquire an employing enterprise for the sole or primary purpose

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1 of obtaining a reduced liability for contributions is guilty of  
2 a misdemeanor and shall be punished by a fine of not less than  
3 one thousand five hundred dollars (\$1,500) or more than three  
4 thousand dollars (\$3,000) or, if an individual, by imprisonment  
5 for a definite term not to exceed ninety days or both. In  
6 addition, such a person shall be subject to the following civil  
7 penalty imposed by the secretary:

8 (a) if the person is an employer, the person  
9 shall be assigned the highest contribution rate established by  
10 the provisions of this section for the calendar year in which  
11 the violation occurs and the three subsequent calendar years;  
12 provided that, if the difference between the increased penalty  
13 rate and the rate otherwise applicable would be less than two  
14 percent of the employer's payroll, the contribution rate shall  
15 be increased by two percent of the employer's payroll for the  
16 calendar year in which the violation occurs and the three  
17 subsequent calendar years; or

18 (b) if the person is not an employer, the  
19 secretary may impose a civil penalty not to exceed three  
20 thousand dollars (\$3,000).

21 F. Except as provided in Subsection Q of this  
22 section, for each calendar year, if, as of the computation date  
23 for that year, an employer has been a contributing employer  
24 throughout the preceding twenty-four months, the contribution  
25 rate for that employer shall be determined by multiplying the

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1 employer's benefit ratio by the reserve factor as determined  
2 pursuant to Subsection H of this section and, for each calendar  
3 year beginning in calendar year 2017, then multiplying that  
4 product by the employer's experience history factor as  
5 determined under Subsection I of this section; provided that an  
6 employer's contribution rate shall not be less than thirty-  
7 three hundredths percent or more than five and four-tenths  
8 percent, except as provided in Subsection R of this section.

9 An employer's benefit ratio is determined by dividing the  
10 employer's benefit charges during the immediately preceding  
11 fiscal years, up to a maximum of three fiscal years, by the  
12 total of the annual payrolls of the same time period,  
13 calculated to four decimal places, disregarding any remaining  
14 fraction.

15 G. Except as provided in Subsection Q of this  
16 section, for each calendar year, if, as of the computation date  
17 of that year, an employer has been a contributing employer for  
18 less than twenty-four months, the contribution rate for that  
19 employer shall be the average of the contribution rates for all  
20 contributing employers in the employer's industry, as  
21 determined by administrative rule, but shall not be less than  
22 one percent or more than five and four-tenths percent, except  
23 as provided in Subsection R of this section; provided that an  
24 individual, type of organization or employing unit that  
25 acquires all or part of the trade or business of another

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1     employing unit, pursuant to Paragraphs (2) and (3) of  
2     Subsection E of Section 51-1-42 NMSA 1978, that has a rate of  
3     contribution less than average of the contribution rates for  
4     all contributing employers in the employer's industry, shall be  
5     entitled to the transfer of the contribution rate of the other  
6     employing unit to the extent permitted under Subsection E of  
7     this section.

8             H. The division shall ensure that the fund sustains  
9     an adequate reserve. An adequate reserve shall be determined  
10    to mean that the funds in the fund available for benefits equal  
11    the total amount of funds needed to pay between eighteen and  
12    twenty-four months of benefits at the average of the five  
13    highest years of benefits paid in the last twenty-five years.  
14    Except as provided in Subsection Q of this section, for the  
15    purpose of sustaining an adequate reserve, the division shall  
16    determine a reserve factor to be used when calculating an  
17    employer's contribution rate pursuant to Subsection F of this  
18    section by rule promulgated by the secretary. Except as  
19    provided in Subsection Q of this section, the rules shall set  
20    forth a formula that will set the reserve factor in proportion  
21    to the difference between the amount of funds available for  
22    benefits in the fund, as of the computation date, and the  
23    adequate reserve, within the following guidelines:

24             (1) 1.0000 if, as of the computation date, there  
25    is an adequate reserve;

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1 0.0%-0.9% 0.9500

2 Under 0.0% 1.0000.

3 J. Except as provided in [~~Subsection~~] Subsections Q  
4 and R of this section, if an employer's contribution rate  
5 pursuant to Subsection F of this section is calculated to be  
6 greater than five and four-tenths percent, notwithstanding the  
7 limitation pursuant to Subsection F of this section, the  
8 employer shall be charged an excess claims premium in addition  
9 to the contribution rate applicable to the employer; provided  
10 that an employer's excess claims premium shall not exceed one  
11 percent of the employer's annual payroll. The excess claims  
12 premium shall be determined by multiplying the employer's  
13 excess claims rate by the employer's annual payroll. An  
14 employer's excess claims rate shall be determined by  
15 multiplying the difference of the employer's contribution rate,  
16 notwithstanding the limitation pursuant to Subsection F of this  
17 section, less five and four-tenths percent by ten percent.

18 K. Effective calendar year 2017, any other provision  
19 of law notwithstanding, an employer's contribution rate plus  
20 the employer's excess claims rate, if any, shall increase by no  
21 more than two percentage points from one calendar year to the  
22 next.

23 L. Except as provided in Subsection Q of this  
24 section, the division shall promptly notify each employer of  
25 the employer's rate of contributions and excess claims premium

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1 as determined for any calendar year pursuant to this section.  
2 Such notification shall include the amount determined as the  
3 employer's annual payroll, the total of all of the employer's  
4 contributions paid on the employer's behalf for all past years  
5 and total benefits charged to the employer for all such years.  
6 Such determination shall become conclusive and binding upon the  
7 employer unless, within thirty days after the mailing of notice  
8 thereof to the employer's last known address or in the absence  
9 of mailing, within thirty days after the delivery of such  
10 notice, the employer files an application for review and  
11 redetermination, setting forth the employer's reason therefor.  
12 The employer shall be granted an opportunity for a fair hearing  
13 in accordance with rules prescribed by the secretary, but an  
14 employer shall not have standing, in any proceeding involving  
15 the employer's rate of contributions or contribution liability,  
16 to contest the chargeability to the employer of any benefits  
17 paid in accordance with a determination, redetermination or  
18 decision pursuant to Section 51-1-8 NMSA 1978, except upon the  
19 ground that the services on the basis of which such benefits  
20 were found to be chargeable did not constitute services  
21 performed in employment for the employer and only in the event  
22 that the employer was not a party to such determination,  
23 redetermination or decision, or to any other proceedings under  
24 the Unemployment Compensation Law in which the character of  
25 such services was determined. The employer shall be promptly

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1 notified of the decision on the employer's application for  
2 redetermination, which shall become final unless, within  
3 fifteen days after the mailing of notice thereof to the  
4 employer's last known address or in the absence of mailing,  
5 within fifteen days after the delivery of such notice, further  
6 appeal is initiated pursuant to Subsection D of Section 51-1-8  
7 NMSA 1978.

8 M. The division shall provide each contributing  
9 employer, within ninety days of the end of each calendar  
10 quarter, a written determination of benefits chargeable to the  
11 employer. Such determination shall become conclusive and  
12 binding upon the employer for all purposes unless, within  
13 thirty days after the mailing of the determination to the  
14 employer's last known address or in the absence of mailing,  
15 within thirty days after the delivery of such determination,  
16 the employer files an application for review and  
17 redetermination, setting forth the employer's reason therefor.  
18 The employer shall be granted an opportunity for a fair hearing  
19 in accordance with rules prescribed by the secretary, but an  
20 employer shall not have standing in any proceeding involving  
21 the employer's contribution liability to contest the  
22 chargeability to the employer of any benefits paid in  
23 accordance with a determination, redetermination or decision  
24 pursuant to Section 51-1-8 NMSA 1978, except upon the ground  
25 that the services on the basis of which such benefits were

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1 found to be chargeable did not constitute services performed in  
2 employment for the employer and only in the event that the  
3 employer was not a party to such determination, redetermination  
4 or decision, or to any other proceedings under the Unemployment  
5 Compensation Law in which the character of such services was  
6 determined. The employer shall be promptly notified of the  
7 decision on the employer's application for redetermination,  
8 which shall become final unless, within fifteen days after the  
9 mailing of notice thereof to the employer's last known address  
10 or in the absence of mailing, within fifteen days after the  
11 delivery of such notice, further appeal is initiated pursuant  
12 to Subsection D of Section 51-1-8 NMSA 1978.

13 N. The contributions and excess claims premiums,  
14 together with interest and penalties thereon imposed by the  
15 Unemployment Compensation Law, shall not be assessed nor shall  
16 action to collect the same be commenced more than four years  
17 after a report showing the amount of the contributions was due.  
18 In the case of a false or fraudulent contribution report with  
19 intent to evade contributions or a willful failure to file a  
20 report of all contributions due, the contributions and excess  
21 claims premiums, together with interest and penalties thereon,  
22 may be assessed or an action to collect such contributions may  
23 be begun at any time. Before the expiration of such period of  
24 limitation, the employer and the secretary may agree in writing  
25 to an extension thereof and the period so agreed on may be

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1 extended by subsequent agreements in writing. In any case  
2 where the assessment has been made and action to collect has  
3 been commenced within four years of the due date of any  
4 contribution, excess claims premium, interest or penalty,  
5 including the filing of a warrant of lien by the secretary  
6 pursuant to Section 51-1-36 NMSA 1978, such action shall not be  
7 subject to any period of limitation.

8 O. The secretary shall correct any error in the  
9 determination of an employer's rate of contribution during the  
10 calendar year to which the erroneous rate applies,  
11 notwithstanding that notification of the employer's rate of  
12 contribution may have been issued and contributions paid  
13 pursuant to the notification. Upon issuance by the division of  
14 a corrected rate of contribution, the employer shall have the  
15 same rights to review and redetermination as provided in  
16 Subsection L of this section.

17 P. Any interest required to be paid on advances to  
18 this state's unemployment compensation fund under Title 12 of  
19 the Social Security Act shall be paid in a timely manner as  
20 required under Section 1202 of Title 12 of the Social Security  
21 Act and shall not be paid, directly or indirectly, by the state  
22 from amounts in the state's unemployment compensation fund.

23 Q. The secretary shall omit data for March 1, 2020  
24 through June 30, 2021 from calculations of an employing  
25 enterprise's experience history, excess claims premiums and

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1 excess claims rates. The secretary shall use the 2019  
2 computation date reserve factor from January 1, 2020 through  
3 June 30, 2021.

4 R. Beginning January 1, 2022 and prior to January 1,  
5 2024, for each contributing employer, two-tenths percent shall  
6 be added to the contribution rate determined pursuant to  
7 Subsections F and G of this section.

8 [~~R.~~] S. As used in this section:

9 (1) "annual payroll" means the total taxable  
10 amount of remuneration from an employer for employment during a  
11 twelve-month period ending on a computation date;

12 (2) "base-period employers" means the employers  
13 of an individual during the individual's base period;

14 (3) "base-period wages" means the wages of an  
15 individual for insured work during the individual's base period  
16 on the basis of which the individual's benefit rights were  
17 determined;

18 (4) "common ownership" means that two or more  
19 businesses are substantially owned, managed or controlled by  
20 the same person or persons;

21 (5) "computation date" for each calendar year  
22 means the close of business on June 30 of the preceding  
23 calendar year;

24 (6) "employing enterprise" means a business  
25 activity engaged in by a contributing employing unit in which

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1 one or more persons have been employed within the current or  
2 the three preceding calendar quarters. An "employing  
3 enterprise" includes the employer's workforce;

4 (7) "experience history" means the benefit  
5 charges and payroll experience of the employing enterprise;

6 (8) "knowingly" means having actual knowledge of  
7 or acting with deliberate ignorance of or reckless disregard  
8 for the prohibition involved;

9 (9) "predecessor" means the owner and operator  
10 of an employing enterprise immediately prior to the transfer of  
11 such enterprise;

12 (10) "successor" means any person that acquires  
13 an employing enterprise and continues to operate such business  
14 entity; and

15 (11) "violates or attempts to violate" includes  
16 an intent to evade, a misrepresentation or a willful  
17 nondisclosure."

18 SECTION 2. Section 51-1-42 NMSA 1978 (being Laws 2003,  
19 Chapter 47, Section 12, as amended) is amended to read:

20 "51-1-42. DEFINITIONS.--As used in the Unemployment  
21 Compensation Law:

22 A. "base period" means the first four of the last  
23 five completed calendar quarters immediately preceding the  
24 first day of an individual's benefit year, except that "base  
25 period" means for benefit years beginning on or after January

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1 1, 2005 for an individual who does not have sufficient wages in  
2 the base period as defined to qualify for benefits pursuant to  
3 Section 51-1-5 NMSA 1978, the individual's base period shall be  
4 the last four completed calendar quarters immediately preceding  
5 the first day of the individual's benefit year if that period  
6 qualifies the individual for benefits pursuant to Section  
7 51-1-5 NMSA 1978; provided that:

8 (1) wages that fall within the base period of  
9 claims established pursuant to this subsection are not  
10 available for reuse in qualifying for a subsequent benefit  
11 year; and

12 (2) in the case of a combined-wage claim  
13 pursuant to the arrangement approved by the federal secretary  
14 of labor, the base period is that base period applicable under  
15 the unemployment compensation law of the paying state;

16 B. "benefits" means the cash unemployment  
17 compensation payments payable to an eligible individual  
18 pursuant to Section 51-1-4 NMSA 1978 with respect to the  
19 individual's weeks of unemployment;

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

24 D. "employing unit" means any individual or type of  
25 organization, including any partnership, association,

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1 cooperative, trust, estate, joint-stock company, agricultural  
2 enterprise, insurance company or corporation, whether domestic  
3 or foreign, or the receiver, trustee in bankruptcy, trustee or  
4 successor thereof, household, fraternity or club, the legal  
5 representative of a deceased person or any state or local  
6 government entity to the extent required by law to be covered  
7 as an employer, that has in its employ one or more individuals  
8 performing services for it within this state. An individual  
9 performing services for an employing unit that maintains two or  
10 more separate establishments within this state shall be deemed  
11 to be employed by a single employing unit for all the purposes  
12 of the Unemployment Compensation Law. An individual performing  
13 services for a contractor, subcontractor or agent that is  
14 performing work or services for an employing unit, as described  
15 in this subsection, that are within the scope of the employing  
16 unit's usual trade, occupation, profession or business, shall  
17 be deemed to be in the employ of the employing unit for all  
18 purposes of the Unemployment Compensation Law unless the  
19 contractor, subcontractor or agent is itself an employer within  
20 the provisions of Subsection E of this section;

21 E. "employer" includes:

22 (1) an employing unit that:

23 (a) unless otherwise provided in this  
24 section, paid for service in employment as defined in  
25 Subsection F of this section wages of four hundred fifty

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1 dollars (\$450) or more in any calendar quarter in either the  
2 current or preceding calendar year or had in employment, as  
3 defined in Subsection F of this section, for some portion of a  
4 day in each of twenty different calendar weeks during either  
5 the current or the preceding calendar year, and irrespective of  
6 whether the same individual was in employment in each such day,  
7 at least one individual;

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

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

24 (2) any individual or type of organization that  
25 acquired the trade or business or substantially all of the

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1 assets thereof, of an employing unit that at the time of the  
2 acquisition was an employer subject to the Unemployment  
3 Compensation Law; provided that where such an acquisition takes  
4 place, the secretary may postpone activating the individual or  
5 type of organization pursuant to Section 51-1-11 NMSA 1978  
6 until such time as the successor employer has employment as  
7 defined in Subsection F of this section;

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

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

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

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

25 (5) an employing unit that, having become an

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1 employer under Paragraph (1), (2), (3) or (4) of this  
2 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to  
3 be an employer subject to the Unemployment Compensation Law;

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

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

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

15 F. "employment":

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

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

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

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



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

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

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

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

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

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

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

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

12 (a) the 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 that  
15 employment during any calendar quarter in either the current or  
16 the preceding calendar year; or 2) employed in agricultural  
17 labor ten or more individuals for some portion of a day in each  
18 of twenty different calendar weeks in either the current or  
19 preceding calendar year, whether or not the weeks were  
20 consecutive, and regardless of whether the individuals were  
21 employed at the same time;

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

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1 Immigration and Nationality Act; and

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

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

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

25 (a) the service is excluded from

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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 requirements  
4 of "employer" as provided in Subparagraph (a) of Paragraph (1)  
5 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 employ  
9 of an American employer, other than service that is deemed  
10 "employment" under the provisions of Paragraph (2) of this  
11 subsection or the parallel provisions of another state's law,  
12 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 business in  
16 the United States, but: 1) the employer is an individual who  
17 is a resident of this state; 2) the employer is a corporation  
18 organized under the laws of this state; or 3) the employer is a  
19 partnership or a trust and the number of the partners or  
20 trustees who are residents of this state is greater than the  
21 number who are residents of any one other state; or

22 (c) none of the criteria of Subparagraphs  
23 (a) and (b) of this paragraph are met, but the employer has  
24 elected coverage in this state or, the employer having failed  
25 to elect coverage in any state, the individual has filed a

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1 claim for benefits, based on such service, under the law of  
2 this state.

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

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

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

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

25 (b) the service is not otherwise excluded

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1 from employment pursuant to the Unemployment Compensation Law;

2 (12) does not include:

3 (a) service performed in the employ of: 1)  
4 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 ordained,  
9 commissioned or licensed minister of a church in the exercise  
10 of such ministry or by a member of a religious order in the  
11 exercise of duties required by such order;

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

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

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1 for such instrumentalities in the same manner, to the same  
2 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 of 1986, 26 U.S.C. Section 3304, the  
7 payments required of such instrumentalities with respect to  
8 such year shall be refunded by the department from the fund in  
9 the same manner and within the same period as is provided in  
10 Subsection D of Section 51-1-36 NMSA 1978 with respect to  
11 contributions 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 that 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 for a  
2 person as an insurance agent or as an insurance solicitor, if  
3 all such service performed by the individual for the person is  
4 performed for remuneration solely by way of commission;

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

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

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

21 (l) service performed by an individual who  
22 is enrolled at a nonprofit or public educational institution  
23 that normally maintains a regular faculty and curriculum and  
24 normally has a regularly organized body of students in  
25 attendance at the place where its educational activities are

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

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

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

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

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

24 (q) service performed for a private, for-  
25 profit person or entity by an individual as a product

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

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

16 (13) for the purposes of this subsection, if the  
17 services performed during one-half or more of any pay period by  
18 an individual for the person employing the individual  
19 constitute employment, all the services of the individual for  
20 the period shall be deemed to be employment, but, if the  
21 services performed during more than one-half of any such pay  
22 period by an individual for the person employing the individual  
23 do not constitute employment, then none of the services of the  
24 individual for the period shall be deemed to be employment. As  
25 used in this paragraph, the term "pay period" means a period,

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

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

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

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

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1 in such employment are eligible for partial unemployment  
2 benefits, but no individual who is otherwise eligible shall be  
3 deemed ineligible for benefits solely for the reason that the  
4 individual seeks, applies for or accepts only part-time work,  
5 instead of full-time work, if the part-time work is for at  
6 least twenty hours per week;

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

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

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

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

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

25 (3) pays, either on the crew leader's own behalf

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1 or on behalf of such other person, the individuals so furnished  
2 by the crew leader for service in agricultural labor; and

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

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

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

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

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

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1 preceding benefit year; provided that at the time of filing  
2 such a claim the individual has been paid the wage required  
3 under Paragraph (5) of Subsection A of Section 51-1-5 NMSA  
4 1978;

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

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

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

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

24 (4) in handling, planting, drying, packing,  
25 packaging, processing, freezing, grading, storing or delivery

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

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

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

18 S. "department" means the workforce solutions  
19 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 rules  
25 prescribed by the secretary; provided that the term "wages"

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1 shall not include the following; provided that wages paid by an  
2 employer to an individual in the employer's employ during any  
3 calendar year in excess of the base wage in effect for that  
4 calendar year shall be reported to the department but shall be  
5 exempt from the payment of contributions unless such wages paid  
6 in excess of the base wage become subject to tax under a  
7 federal law imposing a tax against which credit may be taken  
8 for contributions required to be paid into a state unemployment  
9 fund:

10 (1) ~~[subsequent to December 31, 1977]~~ for the  
11 periods:

12 (a) prior to January 1, 2022 and beginning  
13 January 1, 2024, that part of the remuneration in excess of the  
14 base wage as determined by the secretary for each calendar  
15 year. The base wage upon which contribution shall be paid  
16 during any calendar year shall be sixty percent of the state's  
17 average annual earnings computed by the division by dividing  
18 total wages reported to the division by contributing employers  
19 for the second preceding calendar year before the calendar year  
20 the computed base wage becomes effective by the average annual  
21 employment reported by contributing employers for the same  
22 period rounded to the next higher multiple of one hundred  
23 dollars (\$100); provided that the base wage so computed for any  
24 calendar year shall not be less than seven thousand dollars  
25 (\$7,000); ~~[Wages paid by an employer to an individual in the~~

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1 ~~employer's employ during any calendar year in excess of the~~  
2 ~~base wage in effect for that calendar year shall be reported to~~  
3 ~~the department but shall be exempt from the payment of~~  
4 ~~contributions unless such wages paid in excess of the base wage~~  
5 ~~become subject to tax under a federal law imposing a tax~~  
6 ~~against which credit may be taken for contributions required to~~  
7 ~~be paid into a state unemployment fund] and~~

8 (b) beginning January 1, 2022 and prior to  
9 January 1, 2024, that part of the remuneration in excess of the  
10 base wage as determined by the secretary for each calendar  
11 year. The base wage upon which contribution shall be paid  
12 during any calendar year shall be eighty-eight percent of the  
13 state's average annual earnings computed by the division by  
14 dividing total wages reported to the division by contributing  
15 employers for the second preceding calendar year before the  
16 calendar year the computed base wage becomes effective by the  
17 average annual employment reported by contributing employers  
18 for the same period rounded to the next higher multiple of one  
19 hundred dollars (\$100); provided that the base wage so computed  
20 for any calendar year shall not be less than seven thousand  
21 dollars (\$7,000);

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

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

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

14 (b) sickness or accident disability if the  
15 payments are received under a workers' compensation or  
16 occupational disease disablement law;

17 (c) medical and hospitalization expenses in  
18 connection with sickness or accident disability; or

19 (d) death; provided the individual in its  
20 employ has not the option to receive, instead of provision for  
21 the death benefit, any part of such payment, or, if such death  
22 benefit is insured, any part of the premiums or contributions  
23 to premiums paid by the individual's employing unit and has not  
24 the right under the provisions of the plan or system or policy  
25 of insurance providing for the death benefit to assign the

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1 benefit, or to receive a cash consideration in lieu of the  
2 benefit either upon the individual's withdrawal from the plan  
3 or system providing for the benefit or upon termination of the  
4 plan or system or policy of insurance or of the individual's  
5 service with the employing unit;

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

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

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

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

20 (7) a payment made to, or on behalf of, an  
21 employee or the employee's beneficiary under an arrangement to  
22 which Section 408(p) of the federal Internal Revenue Code of  
23 1986 applies, other than any elective contributions under  
24 Paragraph (2)(A)(i) of that section;

25 (8) a payment made to or for the benefit of an

underscoring material = new  
~~[bracketed material] = delete~~

1 employee if at the time of the payment it is reasonable to  
2 believe that the employee will be able to exclude the payment  
3 from income under Section 106 of the federal Internal Revenue  
4 Code of 1986; or

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

10 **SECTION 3. APPROPRIATION.**--Three hundred million dollars  
11 (\$300,000,000) is appropriated from the general fund to the  
12 workforce solutions department for expenditure in fiscal year  
13 2021 to pay claims for benefits pursuant to the Unemployment  
14 Compensation Law. If, prior to June 29, 2021, federal funds  
15 are deposited in the unemployment compensation fund, then any  
16 unexpended or unencumbered balance remaining on June 30, 2021  
17 shall be transferred to the general fund operating reserve;  
18 provided that if federal funds are not so deposited, any  
19 unexpended or unencumbered balance shall be transferred to the  
20 unemployment compensation fund.

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