

**FIFTY-FIFTH LEGISLATURE
FIRST SESSION, 2021**

March 10, 2021

Mr. Speaker:

Your **COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE**,
to whom has been referred

SENATE BILL 35

has had it under consideration and reports same with
recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 12, after "STUDENTS", insert "; AMENDING
THE DEFINITION OF "EMPLOYEE" IN THE MINIMUM WAGE ACT".

2. On page 1, between lines 14 and 15, insert the following
new section:

"SECTION 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
Chapter 200, Section 2, as amended by Laws 2019, Chapter 114,
Section 1 and by Laws 2019, Chapter 242, Section 2) 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
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,

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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) registered apprentices and learners otherwise provided by law;

~~[(6) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;~~

~~(7)]~~ (6) G.I. bill trainees while under training;

~~[(8)]~~ (7) 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. 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

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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;

~~[(9)]~~ (8) 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

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

~~[(10)]~~ (9) an employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state; or

~~[(11)]~~ (10) 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."".

3. Renumber the succeeding section accordingly.,

Respectfully submitted,

Antonio "Moe" Maestas, Chair

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 6 For 3 Against

Yes: 6

No: Baldonado, Dow, Fajardo

Excused: Powdrell-Culbert

Absent: None