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AN ACT

RELATING TO EMPLOYMENT; REMOVING THE EXCEPTION TO THE MINIMUM WAGE REQUIREMENT FOR SECONDARY SCHOOL STUDENTS; AMENDING THE DEFINITION OF "EMPLOYEE" IN THE MINIMUM WAGE ACT.

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

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 (1) an individual employed in a bona fide
2 executive, administrative or professional capacity and
3 forepersons, superintendents and supervisors;

4 (2) an individual employed by the
5 United States, the state or any political subdivision of the
6 state; provided, however, that for the purposes of Subsection
7 A of Section 50-4-22 NMSA 1978, "employee" includes an
8 individual employed by the state or any political subdivision
9 of the state;

10 (3) an individual engaged in the activities
11 of an educational, charitable, religious or nonprofit
12 organization where the employer-employee relationship does
13 not, in fact, exist or where the services rendered to
14 such organizations are on a voluntary basis. The
15 employer-employee relationship shall not be deemed to exist
16 with respect to an individual being served for purposes of
17 rehabilitation by a charitable or nonprofit organization,
18 notwithstanding the payment to the individual of a stipend
19 based upon the value of the work performed by the individual;

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

22 (5) registered apprentices and learners
23 otherwise provided by law;

24 (6) G.I. bill trainees while under training;

25 (7) seasonal employees of an employer

1 obtaining and holding a valid certificate issued annually by
2 the director of the labor relations division of the workforce
3 solutions department. The certificate shall state the job
4 designations and total number of employees to be exempted.

5 In approving or disapproving an application for a certificate
6 of exemption, the director shall consider the following:

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

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

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

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

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

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

23 (8) any employee employed in agriculture:

24 (a) if the employee is employed by an
25 employer who did not, during any calendar quarter during the

1 preceding calendar year, use more than five hundred
2 person-days of agricultural labor;

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

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

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

1 are paid on the same farm; or

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

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

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

14 SECTION 2. Section 50-4-22 NMSA 1978 (being Laws 1955,
15 Chapter 200, Section 3, as amended) is amended to read:

16 "50-4-22. MINIMUM WAGES.--

17 A. Except as provided in Subsection C of this
18 section, an employer shall pay to an employee a minimum wage
19 rate of:

20 (1) prior to January 1, 2020, at least seven
21 dollars fifty cents (\$7.50) an hour;

22 (2) beginning January 1, 2020 and prior to
23 January 1, 2021, at least nine dollars (\$9.00) an hour;

24 (3) beginning January 1, 2021 and prior to
25 January 1, 2022, at least ten dollars fifty cents (\$10.50) an

1 hour;

2 (4) beginning January 1, 2022 and prior to
3 January 1, 2023, at least eleven dollars fifty cents (\$11.50)
4 an hour; and

5 (5) on and after January 1, 2023, at least
6 twelve dollars (\$12.00) an hour.

7 B. An employer furnishing food, utilities,
8 supplies or housing to an employee who is engaged in
9 agriculture may deduct the reasonable value of such furnished
10 items from any wages due to the employee.

11 C. An employee who customarily and regularly
12 receives more than thirty dollars (\$30.00) a month in tips
13 shall be paid a minimum hourly wage as follows:

14 (1) prior to January 1, 2020, at least two
15 dollars thirteen cents (\$2.13) an hour;

16 (2) beginning January 1, 2020 and prior to
17 January 1, 2021, at least two dollars thirty-five cents
18 (\$2.35) an hour;

19 (3) beginning January 1, 2021 and prior to
20 January 1, 2022, at least two dollars fifty-five cents
21 (\$2.55) an hour;

22 (4) beginning January 1, 2022 and prior to
23 January 1, 2023, at least two dollars eighty cents (\$2.80) an
24 hour;

25 (5) on and after January 1, 2023, at least

1 three dollars (\$3.00) an hour; and

2 (6) the employer may consider tips as part
3 of wages, but the tips combined with the employer's cash wage
4 shall not equal less than the minimum wage rate as provided
5 in Subsection A of this section. All tips received by such
6 employees shall be retained by the employee, except that
7 nothing in this section shall prohibit the pooling of tips
8 among wait staff.

9 D. An employee shall not be required to work more
10 than forty hours in any week of seven days, unless the
11 employee is paid one and one-half times the employee's
12 regular hourly rate of pay for all hours worked in excess of
13 forty hours. For an employee who is paid a fixed salary for
14 fluctuating hours and who is employed by an employer a
15 majority of whose business in New Mexico consists of
16 providing investigative services to the federal government,
17 the hourly rate may be calculated in accordance with the
18 provisions of the federal Fair Labor Standards Act of 1938
19 and the regulations pursuant to that act; provided that in
20 no case shall the hourly rate be less than the federal minimum
21 wage."
