

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 672

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO LABOR; ENACTING THE DAY LABORER ACT; STRENGTHENING
PROTECTION FOR DAY LABORERS; ESTABLISHING AND AMENDING
PENALTIES FOR FAILURE TO PAY WAGES.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 7 of this act may be cited as the "Day Laborer Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Day Laborer Act:

A. "check cashing service" means a business that
for a fee offers to cash checks or other payment instruments or
that advertises that it cashes checks or other payment
instruments;

B. "day labor" means employment that is under a
contract between a day labor service agency and a third-party

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1 employer, that is occasional or irregular and that is for a
2 limited time period;

3 C. "day labor service agency" means an entity,
4 including a labor broker or labor pool, that provides day
5 laborers to third-party employers and that charges the third-
6 party employer for the service of providing day laborers for
7 employment offered by the employer;

8 D. "day laborer" means a person who contracts for
9 day labor employment with a day labor service agency;

10 E. "department" means the labor department;

11 F. "office worker" means a person employed to
12 perform clerical, secretarial or other semiskilled or skilled
13 work that is predominantly performed in an office setting;

14 G. "payment instrument" means a paycheck, payment
15 voucher or other negotiable instrument from an employer
16 provided to an employee to pay for hours worked; and

17 H. "third-party employer" means a person that
18 contracts with a day labor service agency for the employment of
19 day laborers.

20 Section 3. [NEW MATERIAL] EXEMPTIONS.--The following
21 agencies that provide employees on a short-term or otherwise
22 temporary basis are exempted from complying with the provisions
23 of the Day Laborer Act:

24 A. business entities registered as farm labor
25 contractors;

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1 B. temporary services employment agencies where
2 advanced applications, a screening process and job interviews
3 are required;

4 C. a labor union hiring hall; and

5 D. a labor bureau or employment office operated by
6 a business entity for the sole purpose of employing a person
7 for its own use.

8 Section 4. [NEW MATERIAL] DAY LABOR SERVICE AGENCY--
9 THIRD-PARTY EMPLOYER--DUTIES.--

10 A. A day labor service agency shall compensate day
11 laborers for work performed by providing or making available
12 commonly accepted payment instruments that are payable in cash,
13 on demand, at a financial institution.

14 B. At the time of payment of wages, a day labor
15 service agency shall provide each day laborer with an itemized
16 statement showing in detail each deduction made from wages.

17 C. In no event shall deductions made by a day labor
18 service agency, other than those required by federal or state
19 law, reduce a day laborer's wages below federal minimum wage
20 for the hours worked.

21 D. A day labor service agency shall not restrict
22 the right of a day laborer to accept a permanent position with
23 a third-party employer to whom the day laborer has been
24 referred for work or restrict the right of a third-party
25 employer to offer employment to a day laborer.

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1 E. A day labor service agency may collect a
2 reasonable placement fee from a third-party employer.

3 Section 5. [NEW MATERIAL] CHECK CASHING--NOTICE OF
4 FEES.--

5 A. A check cashing service that is a day labor
6 service agency or is operating within the office of a day labor
7 service agency shall not charge a day laborer an amount in
8 excess of two dollars (\$2.00) for cashing a check or payment
9 instrument that is issued by the agency.

10 B. No fees may be charged for cashing a check or
11 payment instrument unless the day laborer:

12 (1) is given the option of being paid with a
13 check or payment instrument that is payable without a fee at a
14 local financial institution; and

15 (2) voluntarily elects to cash the check or
16 payment instrument at the day labor service agency or at a
17 check cashing service operating within the office of the day
18 labor service agency.

19 C. A day labor service agency or a check cashing
20 service that is a day labor service agency or is operating
21 within the office of a day labor service agency shall post
22 notices in the area where cashing of checks or payment
23 instruments occurs. The notices shall be clearly visible and
24 easily readable and shall state the fee for cashing a check or
25 payment instrument. Notices shall be posted in English,

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1 Spanish and any other written language where a high percentage
2 of the workers speak that language. In areas where the day
3 labor service agency employs Navajo workers and the check
4 cashing service cashes checks of Navajo workers, notice shall
5 be posted in Navajo.

6 Section 6. [NEW MATERIAL] PAYMENT FOR ALL WORK REQUIRED--
7 RECORDS--ENFORCEMENT.--

8 A. A day labor service agency shall pay a day
9 laborer for all hours worked or otherwise due and owed to the
10 day laborer. Failure to pay for each day and all hours worked
11 is a violation of the Day Laborer Act. A person who fails to
12 pay a day laborer for work performed or time due is liable for
13 full payment of the wages not paid and civil damages equal to
14 twice the value of the unpaid wages, court costs and attorney
15 fees and costs.

16 B. A day labor service agency shall maintain true
17 and accurate records of the day laborers employed and of the
18 hours worked and wages paid to the day laborers for at least
19 one year after the entry of the record.

20 C. The department shall investigate complaints and
21 enforce the provisions of the Day Laborer Act.

22 D. The department shall adopt rules necessary to
23 implement the Day Laborer Act.

24 Section 7. [NEW MATERIAL] VIOLATIONS--MISDEMEANOR--
25 PENALTIES.--

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1 A. A person who violates the provisions of the Day
2 Laborer Act:

3 (1) on a first offense, is guilty of a
4 misdemeanor and upon conviction shall be sentenced pursuant to
5 Section 31-19-1 NMSA 1978; and

6 (2) for a second and subsequent offense, is
7 guilty of a misdemeanor and shall be sentenced pursuant to
8 Section 31-19-1 NMSA 1978 and shall be fined no less than two
9 hundred fifty dollars (\$250) and not more than one thousand
10 hundred dollars (\$1,000) for each offense for which the person
11 is convicted, which fine shall not be suspended, deferred or
12 taken under advisement.

13 B. In addition to any other fees or fines that may
14 be imposed on an offender convicted pursuant to this section,
15 the court may order the offender to pay restitution pursuant to
16 Section 31-17-1 NMSA 1978.

17 C. Each occurrence of a violation for which a
18 person is convicted is a separate offense. Multiple violations
19 arising from transactions with the same person or multiple
20 violations arising from transactions with different people
21 shall be considered separate occurrences.

22 Section 8. Section 50-4-10 NMSA 1978 (being Laws 1937,
23 Chapter 109, Section 11) is amended to read:

24 "50-4-10. FORFEITURE AND PENALTIES.--

25 [~~Any~~] A. An employer who [~~shall violate~~] violates

1 or fails to comply with any provision of [this act or fail to
2 comply with any provision of this act shall be] Sections 50-4-1
3 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and upon
4 conviction [thereof] for a first offense shall be [punished by
5 a fine of not less than twenty-five dollars nor more than fifty
6 dollars for each separate offense or by imprisonment of not
7 less than ten days nor more than ninety days or by both such
8 fine and imprisonment] sentenced pursuant to Section 31-19-1
9 NMSA 1978.

10 B. A person who is convicted of a second or
11 subsequent offense of violating or failing to comply with any
12 provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is
13 guilty of a misdemeanor and shall be sentenced pursuant to
14 Section 31-19-1 NMSA 1978 and shall be fined no less than two
15 hundred fifty dollars (\$250) and not more than one thousand
16 dollars (\$1,000) for each offense for which the person is
17 convicted, which fine shall not be suspended, deferred or taken
18 under advisement.

19 C. Each occurrence of a violation for which a
20 person is convicted is a separate offense. Multiple violations
21 arising from transactions with the same person or multiple
22 violations arising from transactions with different people
23 shall be considered separate occurrences.

24 D. In case the employer is a corporation, the fine
25 [hereinbefore] provided in this section shall be assessed

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1 against [~~said~~] the corporation as a penalty."

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