

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 258

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO PAYMENT OF WAGES; INCREASING THE STATE MINIMUM
WAGE; EXPANDING EXEMPTIONS; PROVIDING FOR A TRAINING WAGE;
PREEMPTING LOCAL INCREASES FOR FOUR YEARS; PRESERVING LOCAL
ORDINANCES.

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) 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 any employee, but shall

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underscoring material = new
[bracketed material] = delete

1 not include the United States, the state or any political
2 subdivision thereof; and

3 C. "employee" includes any individual employed by
4 any employer, but shall not include:

5 (1) any individual employed in domestic
6 service in or about a private home;

7 (2) any individual employed in a bona fide
8 executive, administrative or professional capacity and foremen,
9 superintendents and supervisors;

10 (3) any individual employed by the United
11 States or by the state or any political subdivision thereof;

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

22 (5) salesmen or employees compensated upon
23 piecework, flat rate schedules or commission basis;

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

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1 (7) registered apprentices and learners
 2 otherwise provided by law;

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

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

8 (10) persons employed by ambulance services;

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

10 (12) seasonal employees of any employer
 11 obtaining and holding a valid certificate issued annually by
 12 the ~~[state labor commissioner]~~ director of the labor and
 13 industrial division of the labor department. The certificate
 14 shall state the job designations and total number of employees
 15 to be exempted. In approving or disapproving an application
 16 for a certificate of exemption, the ~~[commissioner]~~ director
 17 shall consider the following:

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

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

22 (c) that the individual will be
 23 furnished ~~[his]~~ room and board in connection with such
 24 employment, or if the camp or retreat is a day camp or retreat,
 25 the individual will be furnished board in connection with such

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1 employment;

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

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

6 (f) any other factors that the
7 ~~[commissioner]~~ director deems necessary to consider;

8 (13) any employee employed in agriculture:

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

13 (b) if such employee is the parent,
14 spouse, child or other member of ~~[his]~~ the employer's immediate
15 family; for the purpose of this subsection, employer shall
16 include the principal stockholder of a family corporation;

17 (c) if such employee: 1) is employed as
18 a hand-harvest laborer and is paid on a piece-rate basis in an
19 operation ~~[which]~~ that has been, and is customarily and
20 generally recognized as having been, paid on a piece-rate basis
21 in the region of employment; 2) commutes daily from ~~[his]~~ the
22 employee's permanent residence to the farm on which ~~[he]~~ the
23 employee is so employed; and 3) has been employed in
24 agriculture less than thirteen weeks during the preceding
25 calendar year;

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

11 (e) if such employee is principally
12 engaged in the range production of livestock; ~~[or]~~

13 (14) persons employed by a food processor if
14 the food processor has obtained a valid certificate of
15 exemption issued annually by the director of the labor and
16 industrial division of the labor department. The director
17 shall adopt rules and procedures for issuing a certificate
18 pursuant to this paragraph. The director shall issue a
19 certificate if the food processor:

20 (a) obtains a resolution from the local
21 governing body where the business is located that supports the
22 exemption sought by the food processor;

23 (b) demonstrates that economic hardship would
24 result without the exemption; and

25 (c) meets other requirements as established by

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1 rule; or

2 [~~(14)~~] (15) employees of charitable, religious
3 or nonprofit organizations who reside on the premises of group
4 homes operated by such charitable, religious or nonprofit
5 organizations [~~for mentally retarded or emotionally or~~
6 ~~developmentally disabled persons~~]."

7 Section 2. Section 50-4-22 NMSA 1978 (being Laws 1955,
8 Chapter 200, Section 3, as amended by Laws 2005, Chapter 302,
9 Section 1 and by Laws 2005, Chapter 306, Section 1) is amended
10 to read:

11 "50-4-22. MINIMUM WAGES.--

12 A. An employer [~~except as provided in Section~~
13 ~~50-4-21 NMSA 1978~~] shall pay an employee the minimum wage rate
14 of [~~five dollars fifteen cents (\$5.15)~~] six dollars seventy-
15 five cents (\$6.75) an hour after December 31, 2006 and seven
16 dollars fifty cents (\$7.50) an hour after December 31, 2007,
17 except that an employer furnishing food, utilities, supplies or
18 housing to an employee who is engaged in agriculture may deduct
19 the reasonable value of such furnished items from any wages due
20 to the employee.

21 B. An employee [~~subject to Subsection A of this~~
22 ~~section~~] who customarily and regularly receives more than
23 thirty dollars (\$30.00) a month in tips shall be paid a minimum
24 hourly wage of two dollars thirteen cents (\$2.13). The
25 employer may consider tips as part of wages, but the tips

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1 combined with the employer's cash wage shall not equal less
2 than [~~five dollars sixty cents (\$5.60) per hour~~] the minimum
3 wage rate as provided in Subsection A of this section. All
4 tips received by such employees shall be retained by the
5 employee, except that nothing in this section shall prohibit
6 the pooling of tips among employees.

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

20 D. On January 1, 2009 and on January 1 of each
21 successive year, the minimum wage rate shall be increased by
22 the increase in the cost of living. The increase in the cost
23 of living shall be measured by the lesser of three percent or
24 the percentage increase as of August of the immediately
25 preceding year over the level as of August of the previous year

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1 of the consumer price index for all urban consumers, United
2 States city average for all items, or its successor index as
3 published by the United States department of labor or its
4 successor agency, with the amount of the minimum wage increase
5 rounded to the nearest multiple of five cents (\$.05). The
6 labor and industrial division of the labor department shall
7 publish by November 1 of each year the adjusted minimum wage
8 rates that shall take effect the following January 1."

9 Section 3. A new section of the Minimum Wage Act is
10 enacted to read:

11 "[NEW MATERIAL] TRAINING WAGE--DISQUALIFICATION.--

12 A. An employer may pay a training wage of not less
13 than five dollars fifteen cents (\$5.15) an hour or the federal
14 minimum wage, whichever is higher, to a new employee in the
15 first sixty days of employment. A new employee is a person who
16 has not previously been employed by that employer.

17 B. An employer shall not take any action to
18 displace an employee for the purpose of hiring another employee
19 at the training wage set forth in this section. Displacing an
20 employee includes termination of employment, layoff and partial
21 displacement such as reduction in hours, wages or employment
22 benefits.

23 C. If the director of the labor and industrial
24 division of the labor department determines that an employer
25 has violated the provisions of this section, the director shall

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1 disqualify the employer from paying a training wage to any
2 employee.

3 D. The director may adopt rules and procedures
4 governing disqualification of employers pursuant to this
5 section."

6 Section 4. A new section of the Minimum Wage Act is
7 enacted to read:

8 "[NEW MATERIAL] TEMPORARY STATE PREEMPTION--SAVING
9 CLAUSE.--

10 A. Cities, counties, home rule municipalities and
11 other political subdivisions of the state are prohibited from
12 adopting or continuing in effect any law or ordinance that
13 would increase the minimum wage rates set forth in the Minimum
14 Wage Act. The provisions of this subsection expire on December
15 31, 2010.

16 B. A local law or ordinance, whether advisory or
17 self-executing, in effect on February 1, 2006, that provides
18 for a higher minimum wage rate than that set forth in the
19 Minimum Wage Act shall continue in full force and be given full
20 effect until repealed."

21 Section 5. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is January 1, 2007.