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AN ACT

RELATING TO PAYMENT OF WAGES; INCREASING THE STATE MINIMUM WAGE IN TWO PHASES; MODIFYING EXEMPTIONS; PREEMPTING LOCAL INCREASES FOR TWO YEARS; PRESERVING LOCAL INCREASE ORDINANCES IN EFFECT ON JANUARY 1, 2007.

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 an employee, but shall not include the United States; and

C. "employee" includes an individual employed by an employer, but shall not include:

(1) an individual employed in domestic service in or about a private home;

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

1 (3) an individual employed by the United  
2 States;

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

13 (5) salespersons or employees compensated  
14 upon piecework, flat rate schedules or commission basis;

15 (6) students regularly enrolled in primary  
16 or secondary schools working after school hours or on  
17 vacation;

18 (7) registered apprentices and learners  
19 otherwise provided by law;

20 (8) persons eighteen years of age or under  
21 who are not students in a primary, secondary, vocational or  
22 training school;

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

25 (10) G.I. bill trainees while under

1 training;

2 (11) seasonal employees of an employer  
3 obtaining and holding a valid certificate issued annually by  
4 the director of the labor and industrial division of the  
5 labor department. The certificate shall state the job  
6 designations and total number of employees to be exempted.  
7 In approving or disapproving an application for a certificate  
8 of exemption, the director shall consider the following:

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

12 (b) that such employment will be of a  
13 temporary nature;

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

19 (d) the purposes for which the camp or  
20 retreat is operated;

21 (e) the job classifications for the  
22 positions to be exempted; and

23 (f) any other factors that the director  
24 deems necessary to consider;

25 (12) any employee employed in agriculture:

1 (a) if the employee is employed by an  
2 employer who did not, during any calendar quarter during the  
3 preceding calendar year, use more than five hundred man-days  
4 of agricultural labor;

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

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

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

1 3) is paid at the same piece-rate as employees over age  
2 sixteen are paid on the same farm; or

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

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

10 (14) employees of charitable, religious or  
11 nonprofit organizations who reside on the premises of group  
12 homes operated by such charitable, religious or nonprofit  
13 organizations for mentally retarded or emotionally or  
14 developmentally disabled persons."

15 Section 2. Section 50-4-22 NMSA 1978 (being Laws 1955,  
16 Chapter 200, Section 3, as amended by Laws 2005, Chapter 302,  
17 Section 1 and by Laws 2005, Chapter 306, Section 1) is  
18 amended to read:

19 "50-4-22. MINIMUM WAGES.--

20 A. An employer shall pay an employee the minimum  
21 wage rate of six dollars fifty cents (\$6.50) an hour. As of  
22 January 1, 2009, an employer shall pay the minimum wage rate  
23 of seven dollars fifty cents (\$7.50) an hour.

24 B. An employer furnishing food, utilities,  
25 supplies or housing to an employee who is engaged in

1 agriculture may deduct the reasonable value of such furnished  
2 items from any wages due to the employee.

3 C. An employee who customarily and regularly  
4 receives more than thirty dollars (\$30.00) a month in tips  
5 shall be paid a minimum hourly wage of two dollars thirteen  
6 cents (\$2.13). The employer may consider tips as part of  
7 wages, but the tips combined with the employer's cash wage  
8 shall not equal less than the minimum wage rate as provided  
9 in Subsection A of this section. All tips received by such  
10 employees shall be retained by the employee, except that  
11 nothing in this section shall prohibit the pooling of tips  
12 among employees.

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

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

3 "TEMPORARY STATE PREEMPTION--SAVING CLAUSE.--

4 A. Except as provided in Subsection B of this  
5 section, cities, counties, home rule municipalities and other  
6 political subdivisions of the state shall not adopt or  
7 continue in effect any law or ordinance that would mandate a  
8 minimum wage rate higher than that set forth in the Minimum  
9 Wage Act. The provisions of this subsection expire on  
10 January 1, 2010.

11 B. A local law or ordinance, whether advisory or  
12 self-executing, in effect on January 1, 2007 that provides  
13 for a higher minimum wage rate than that set forth in the  
14 Minimum Wage Act shall continue in full force and effect  
15 until repealed."

16 Section 4. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is January 1, 2008. \_\_\_\_\_

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