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HOUSE BILL 443

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Phillip M. Archuleta

AN ACT

RELATING TO LABOR AND EMPLOYMENT; AMENDING THE MINIMUM WAGE ACT TO CREATE A PREFERENCE FOR CIVIL ACTIONS AND APPEALS BROUGHT TO COLLECT UNPAID OR UNDERPAID WAGES TO BE HEARD BY THE COURT TO THE SAME EXTENT AS CIVIL ACTIONS TO COLLECT UNEMPLOYMENT CONTRIBUTIONS; AMENDING THE UNEMPLOYMENT COMPENSATION LAW TO PROVIDE THAT CIVIL ACTIONS TO COLLECT UNEMPLOYMENT CONTRIBUTIONS SHALL HAVE A PREFERENCE, TO THE SAME EXTENT AS CIVIL ACTIONS AND APPEALS BROUGHT TO COLLECT UNPAID OR UNDERPAID WAGES, TO BE HEARD BY THE COURT.

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

**SECTION 1.** Section 50-4-26 NMSA 1978 (being Laws 1955, Chapter 200, Section 5, as amended) is amended to read:

"50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

A. An employer who violates any of the provisions

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1 of the Minimum Wage Act is guilty of a misdemeanor and upon  
2 conviction shall be sentenced pursuant to the provisions of  
3 Section 31-19-1 NMSA 1978.

4 B. The director of the labor relations division of  
5 the workforce solutions department shall enforce and prosecute  
6 violations of the Minimum Wage Act. The director may institute  
7 in the name of the state an action in the district court of the  
8 county wherein the employer who has failed to comply with the  
9 Minimum Wage Act resides or has a principal office or place of  
10 business, for the purpose of prosecuting violations. The  
11 district attorney for the district wherein any violation hereof  
12 occurs shall aid and assist the director in the prosecution.

13 C. In addition to penalties provided pursuant to  
14 this section, an employer who violates any provision of Section  
15 50-4-22 NMSA 1978 shall be liable to the employees affected in  
16 the amount of their unpaid or underpaid minimum wages plus  
17 interest, and in an additional amount equal to twice the unpaid  
18 or underpaid wages.

19 D. An action to recover such liability may be  
20 maintained in any court of competent jurisdiction by any one or  
21 more employees for and on behalf of the employee or employees  
22 and for other employees similarly situated, or such employee or  
23 employees may designate an agent or representative to maintain  
24 such action on behalf of all employees similarly situated.

25 E. The court in any action brought under Subsection  
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1 D of this section shall, in addition to any judgment awarded to  
2 the plaintiff or plaintiffs, allow costs of the action and  
3 reasonable attorney fees to be paid by the defendant. In any  
4 proceedings brought pursuant to the provisions of this section,  
5 the employee shall not be required to pay any filing fee or  
6 other court costs necessarily incurred in such proceedings.

7 F. In addition to any remedy or punishment provided  
8 pursuant to the Minimum Wage Act, a court may order appropriate  
9 injunctive relief, including requiring an employer to post in  
10 the place of business a notice describing violations by the  
11 employer as found by the court or a copy of a cease and desist  
12 order applicable to the employer.

13 G. Civil actions and appeals of civil actions  
14 brought to collect unpaid or underpaid wages, interest and any  
15 other amounts due under this section shall be heard by the  
16 court at the earliest possible date and shall be entitled to a  
17 preference over all other civil actions, to the same extent as  
18 civil actions to collect contributions pursuant to Section  
19 51-1-36 NMSA 1978, on the calendar of the court."

20 SECTION 2. Section 51-1-36 NMSA 1978 (being Laws 1936  
21 (S.S.), Chapter 1, Section 14, as amended) is amended to read:

22 "51-1-36. COLLECTION OF CONTRIBUTIONS.--

23 A. Contributions unpaid on the date on which they  
24 are due and payable shall bear interest at the rate of one  
25 percent per month from and after such date until payment is

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1 received by the division. Interest collected pursuant to this  
2 subsection shall be paid into the employment security  
3 department fund.

4 B. If, after due notice, any employer defaults in  
5 any payment of contributions or interest thereon, the amount  
6 due shall be collected by civil action in the name of the  
7 division, and the employer adjudged in default shall pay the  
8 costs of such action. Civil actions brought under this section  
9 to collect contributions or interest thereon from an employer  
10 shall be heard by the court at the earliest possible date and  
11 shall be entitled to preference on the calendar of the court,  
12 to the same extent as civil actions and appeals of civil  
13 actions brought to collect unpaid or underpaid wages, interest  
14 and any other amounts due under Section 50-4-26 NMSA 1978, over  
15 all other civil actions except petitions for judicial review  
16 under this act and worker's compensation cases arising under  
17 [~~Sections 52-1-1 through 52-2-13~~] Chapter 52, Article 1 NMSA  
18 1978 or in the discretion of the secretary, if any contribution  
19 or any portion thereof or any interest or penalty imposed by  
20 the Unemployment Compensation Law is not paid within thirty  
21 days after the same becomes due, the secretary shall, after due  
22 notice and opportunity to be heard in accordance with  
23 regulations, issue a warrant under its official seal, directed  
24 to the sheriff of any county of the state commanding ~~him~~ the  
25 sheriff to levy upon and sell the real and personal property of

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1 the person owning the same, found within [~~his~~] that county, of  
2 the payment of the amount due and an added amount of ten  
3 percent of the contribution in addition to any other penalties  
4 imposed and costs of executing the warrant, and to return such  
5 warrant to the secretary and pay to [~~him~~] the secretary the  
6 money collected by virtue thereof, by the time to be [~~therein~~]  
7 specified, not more than thirty days from the date of the  
8 warrant. In the event the division does not know the amount of  
9 contribution due, and the employer from whom the same is due  
10 refuses or fails to make reports showing what [~~he or it~~] the  
11 employer or the division claims for the amount of contributions  
12 [~~which it~~] that the division believes to be due, and the  
13 division files the warrant for the estimated amount, mailing  
14 notice to the employer stating that [~~it~~] the division is  
15 estimating the amount of contribution due and giving the  
16 estimated amount in the notice, the warrant and estimated  
17 amount shown [~~therein~~] shall have the same effect as any other  
18 warrant issued under this subsection. If the employer does not  
19 make a showing to the satisfaction of the secretary that the  
20 estimated amount is incorrect within thirty days after the  
21 warrant is filed with the county clerk, then the estimated  
22 amount shown in the warrant shall be and become the amount of  
23 the contribution due for the period stated in the warrant. The  
24 sheriff to whom any warrant, issued under this section, is  
25 directed shall, within five days after receipt of the same,

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1 file with the county clerk of [~~his~~] the sheriff's county a copy  
2 thereof, for which the clerk shall make no charge, and  
3 thereupon the county clerk shall record the same upon [~~his~~] the  
4 clerk's records and the day when such copy is filed. Thereupon  
5 the amount of the warrant so filed and entered shall become a  
6 lien upon all property, real and personal, of the person  
7 against whom it is issued, including choses in action, except  
8 negotiable instruments not past due; provided, however, that  
9 such lien shall be inferior to all other valid liens,  
10 encumbrances, mortgages, judgments and assessments [~~which~~] that  
11 are filed or placed of record prior to the filing of such  
12 warrant. The sheriff or a representative of the division  
13 thereupon shall levy upon any property of the taxpayer,  
14 including negotiable instruments, and the property so levied on  
15 shall be sold in all respects with the like effect, and in the  
16 same manner as is prescribed by law with respect to executions  
17 against property upon judgments of a court of record, and the  
18 remedies of garnishment shall apply. Whenever any property or  
19 right to property upon which levy has been made is not  
20 sufficient to satisfy the claim for which levy is made, the  
21 sheriff or a representative of the division may thereafter, and  
22 as often as may be necessary, proceed to levy in like manner  
23 upon any other property or rights to property subject to levy  
24 of the person against whom the claim exists, until the amount  
25 due from [~~him~~] the person is fully paid. The sheriff shall be

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1 entitled to the general fees for [~~his~~] services in executing  
2 the warrant as now allowed by law for like services, to be  
3 collected in the same manner as now provided by law for like  
4 services. All costs of executing warrants including mileage of  
5 the sheriff serving and executing the same and all other costs  
6 in connection with the levy, including advertising or  
7 publication costs upon the sale of any property levied upon,  
8 shall be collected by the department from the employer from  
9 whom contribution is due.

10 C. In the event of any distribution of an  
11 employer's assets pursuant to an order of any court under the  
12 laws of this state, including any receivership, assignment for  
13 benefit of creditors, adjudicated insolvency, composition or  
14 similar proceeding, contributions then or thereafter due shall  
15 be paid in full prior to all other claims except taxes and  
16 claims for remuneration of not more than two hundred fifty  
17 dollars (\$250) to each claimant, earned within six months of  
18 the commencement of the proceeding. In the event of an  
19 employer's adjudication in bankruptcy, judicially confirmed  
20 extension proposal, or composition, under the Federal  
21 Bankruptcy Code 11 U.S.C. Sec. 101 et seq., contributions then  
22 or thereafter due shall be entitled to such priority as is  
23 provided in the Federal Bankruptcy Code U.S.C. Title 11, Sec.  
24 507.

25 D. If, not later than four years after the date on

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1 which any contributions or interest thereon are paid, an  
2 employing unit that has paid such contributions or interest  
3 ~~[thereon shall make]~~ makes application for an adjustment  
4 ~~[thereof]~~ in connection with subsequent contribution payments  
5 or for a refund ~~[thereof]~~ because such adjustment cannot be  
6 made, and the secretary ~~[shall determine]~~ determines that such  
7 contributions or interest or any portion ~~[thereof]~~ was  
8 erroneously collected, the secretary shall allow ~~[such]~~ the  
9 employing unit to make an adjustment, ~~[thereof]~~ without  
10 interest, in connection with subsequent contribution payments  
11 by ~~[him]~~ the employing unit, or if such adjustment cannot be  
12 made, the secretary shall refund the amount, without interest,  
13 from the fund to which the amount was deposited. For like  
14 cause and within the same period, adjustment or refund may be  
15 so made on the secretary's own initiative.

16 E. Any person, group of individuals, partnership or  
17 employing unit that acquires the organization, trade or  
18 business or substantially all the assets thereof from an  
19 employer shall notify the division in writing by registered  
20 mail not later than five days prior to the acquisition. Unless  
21 such notice is given, such acquisition shall be void as against  
22 the division, if, at the time of the acquisition, any  
23 contributions are due and unpaid by the previous employer, and  
24 the secretary shall have the right to proceed against such  
25 employer either in personam or in rem and the assets so

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acquired shall be subject to attachment for such debt."