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HOUSE BILL 110

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Patricia Roybal Caballero and Joanne J. Ferrary

AN ACT

RELATING TO LABOR; INCREASING THE MINIMUM WAGE FOR ALL
EMPLOYEES IN PHASES; PROVIDING FOR AN ANNUAL COST-OF-LIVING
INCREASE IN THAT MINIMUM WAGE RATE BEGINNING IN 2025; REPEALING
SECTION 50-4-23 NMSA 1978 (BEING LAWS 1967, CHAPTER 242,
SECTION 1, AS AMENDED), WHICH PROVIDES FOR REDUCED MINIMUM
WAGES FOR PERSONS WITH DISABILITIES.

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,

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1 association, corporation, business trust, legal representative
2 or organized group of persons employing one or more employees
3 at any one time, acting directly or indirectly in the interest
4 of an employer in relation to an employee, but shall not
5 include the United States, the state or any political
6 subdivision of the state; provided, however, that for the
7 purposes of Subsection A of Section 50-4-22 NMSA 1978,
8 "employer" includes the state or any political subdivision of
9 the state; and

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

12 [~~(1)~~] ~~an individual employed in a bona fide~~
13 ~~executive, administrative or professional capacity and~~
14 ~~forepersons, superintendents and supervisors;~~

15 ~~(2)]~~ (1) an individual employed by the United
16 States, the state or any political subdivision of the state;
17 provided, however, that for the purposes of Subsection A of
18 Section 50-4-22 NMSA 1978, "employee" includes an individual
19 employed by the state or any political subdivision of the
20 state; or

21 [~~(3)~~] ~~an individual engaged in the activities~~
22 ~~of an educational, charitable, religious or nonprofit~~
23 ~~organization where the employer-employee relationship does not,~~
24 ~~in fact, exist or where the services rendered to such~~
25 ~~organizations are on a voluntary basis. The employer-employee~~

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1 ~~relationship shall not be deemed to exist with respect to an~~
2 ~~individual being served for purposes of rehabilitation by a~~
3 ~~charitable or nonprofit organization, notwithstanding the~~
4 ~~payment to the individual of a stipend based upon the value of~~
5 ~~the work performed by the individual;~~

6 ~~(4) salespersons or employees compensated upon~~
7 ~~piecework, flat rate schedules or commission basis;~~

8 ~~(5) registered apprentices and learners~~
9 ~~otherwise provided by law;~~

10 ~~(6) persons eighteen years of age or under who~~
11 ~~are not students in a primary, secondary, vocational or~~
12 ~~training school;~~

13 ~~(7)] (2) G.I. bill trainees while under~~
14 ~~training~~

15 ~~[(8) seasonal employees of an employer~~
16 ~~obtaining and holding a valid certificate issued annually by~~
17 ~~the director of the labor relations division of the workforce~~
18 ~~solutions department. The certificate shall state the job~~
19 ~~designations and total number of employees to be exempted. In~~
20 ~~approving or disapproving an application for a certificate of~~
21 ~~exemption, the director shall consider the following:~~

22 ~~(a) whether such employment shall be at~~
23 ~~an educational, charitable or religious youth camp or retreat;~~

24 ~~(b) that such employment will be of a~~
25 ~~temporary nature;~~

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1 ~~(c) that the individual will be~~
2 ~~furnished room and board in connection with such employment, or~~
3 ~~if the camp or retreat is a day camp or retreat, the individual~~
4 ~~will be furnished board in connection with such employment;~~

5 ~~(d) the purposes for which the camp or~~
6 ~~retreat is operated;~~

7 ~~(e) the job classifications for the~~
8 ~~positions to be exempted; and~~

9 ~~(f) any other factors that the director~~
10 ~~deems necessary to consider;~~

11 ~~(9) any employee employed in agriculture:~~

12 ~~(a) if the employee is employed by an~~
13 ~~employer who did not, during any calendar quarter during the~~
14 ~~preceding calendar year, use more than five hundred person-days~~
15 ~~of agricultural labor;~~

16 ~~(b) if the employee is the parent,~~
17 ~~spouse, child or other member of the employer's immediate~~
18 ~~family; for the purpose of this subsection, the employer shall~~
19 ~~include the principal stockholder of a family corporation;~~

20 ~~(c) if the employee: 1) is employed as~~
21 ~~a hand-harvest laborer and is paid on a piece-rate basis in an~~
22 ~~operation that has been, and is customarily and generally~~
23 ~~recognized as having been, paid on a piece-rate basis in the~~
24 ~~region of employment; 2) commutes daily from the employee's~~
25 ~~permanent residence to the farm on which the employee is so~~

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1 ~~employed; and 3) has been employed in agriculture less than~~
2 ~~thirteen weeks during the preceding calendar year;~~

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

13 ~~(e) if the employee is principally~~
14 ~~engaged in the range production of livestock or in milk~~
15 ~~production;~~

16 ~~(10) an employee engaged in the handling,~~
17 ~~drying, packing, packaging, processing, freezing or canning of~~
18 ~~any agricultural or horticultural commodity in its~~
19 ~~unmanufactured state; or~~

20 ~~(11) employees of charitable, religious or~~
21 ~~nonprofit organizations who reside on the premises of group~~
22 ~~homes operated by such charitable, religious or nonprofit~~
23 ~~organizations for persons who have a mental, emotional or~~
24 ~~developmental disability]."~~

25 SECTION 2. Section 50-4-22 NMSA 1978 (being Laws 1955,

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1 Chapter 200, Section 3, as amended) is amended to read:

2 "50-4-22. MINIMUM WAGES.--

3 A. ~~[Except as provided in Subsection B or D of this~~
4 ~~section]~~ An employer shall pay to an employee a minimum wage
5 rate of:

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

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

10 (3) beginning January 1, 2021 and prior to
11 January 1, 2022, at least ten dollars fifty cents (\$10.50) an
12 hour;

13 (4) beginning January 1, 2022 and prior to
14 January 1, ~~[2023]~~ 2024, at least ~~[eleven dollars fifty cents~~
15 ~~(\$11.50)]~~ twelve dollars (\$12.00) an hour; and

16 (5) ~~[on and after January 1, 2023]~~ beginning
17 January 1, 2024 and prior to January 1, 2025, at least [twelve
18 dollars (\$12.00)] fifteen dollars (\$15.00) an hour.

19 ~~[B. On and after January 1, 2020, an employer who~~
20 ~~employs a student regularly enrolled in secondary school to~~
21 ~~work after school hours or when school is not in session shall~~
22 ~~pay the student a minimum wage rate of at least eight dollars~~
23 ~~fifty cents (\$8.50) an hour unless the student is employed~~
24 ~~pursuant to Subsection D of this section, in which case the~~
25 ~~provisions of that subsection shall apply to the student. In~~

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1 ~~each case, the employer shall follow the provisions of the~~
2 ~~Child Labor Act, and Subsection E of this section shall not~~
3 ~~apply to the student.~~

4 ~~C. An employer furnishing food, utilities, supplies~~
5 ~~or housing to an employee who is engaged in agriculture may~~
6 ~~deduct the reasonable value of such furnished items from any~~
7 ~~wages due to the employee.~~

8 ~~D. An employee who customarily and regularly~~
9 ~~receives more than thirty dollars (\$30.00) a month in tips~~
10 ~~shall be paid a minimum hourly wage as follows:~~

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

13 ~~(2) beginning January 1, 2020 and prior to~~
14 ~~January 1, 2021, at least two dollars thirty-five cents (\$2.35)~~
15 ~~an hour;~~

16 ~~(3) beginning January 1, 2021 and prior to~~
17 ~~January 1, 2022, at least two dollars fifty-five cents (\$2.55)~~
18 ~~an hour;~~

19 ~~(4) beginning January 1, 2022 and prior to~~
20 ~~January 1, 2023, at least two dollars eighty cents (\$2.80) an~~
21 ~~hour;~~

22 ~~(5) on and after January 1, 2023, at least~~
23 ~~three dollars (\$3.00) an hour; and~~

24 ~~(6) the employer may consider tips as part of~~
25 ~~wages, but the tips combined with the employer's cash wage~~

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1 ~~shall not equal less than the minimum wage rate as provided in~~
2 ~~Subsection A of this section. All tips received by such~~
3 ~~employees shall be retained by the employee, except that~~
4 ~~nothing in this section shall prohibit the pooling of tips~~
5 ~~among wait staff.]~~

6 B. On or after January 1, 2025 and on January 1 of
7 each successive year, the minimum wage rate shall be increased
8 by the increase in the cost of living. The increase in the
9 cost of living shall be measured by the percentage increase of
10 the previous year of the consumer price index for all urban
11 consumers, United States city average for all items, or its
12 successor index, as published by the United States department
13 of labor or its successor agency, with the amount of the
14 minimum wage increase rounded to the nearest multiple of five
15 cents (\$.05); however, the minimum wage shall not be adjusted
16 downward as a result of a decrease in the cost of living.

17 ~~[E.]~~ C. An employee shall not be required to work
18 more than forty hours in any week of seven days, unless the
19 employee is paid one and one-half times the employee's regular
20 hourly rate of pay for all hours worked in excess of forty
21 hours. For an employee who is paid a fixed salary for
22 fluctuating hours and who is employed by an employer a majority
23 of whose business in New Mexico consists of providing
24 investigative services to the federal government, the hourly
25 rate may be calculated in accordance with the provisions of the

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1 federal Fair Labor Standards Act of 1938 and the regulations
2 pursuant to that act; provided that in no case shall the hourly
3 rate be less than the federal minimum wage."

4 SECTION 3. REPEAL.--Section 50-4-23 NMSA 1978 (being Laws
5 1967, Chapter 242, Section 1, as amended) is repealed.

6 SECTION 4. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2021.

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