

1 HOUSE BILL 28
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY
4 Miguel P. García
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10 AN ACT

11 RELATING TO LABOR; PROVIDING AN ANNUAL COST-OF-LIVING INCREASE
12 TO THE STATE MINIMUM WAGE RATE BEGINNING IN 2023; PROVIDING
13 THAT CERTAIN TIPPED EMPLOYEES RECEIVE AN HOURLY RATE THAT IS
14 TWENTY-FIVE PERCENT OF THE PREVAILING HOURLY MINIMUM WAGE RATE
15 PLUS TIPS.
16

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

18 SECTION 1. Section 50-4-22 NMSA 1978 (being Laws 1955,
19 Chapter 200, Section 3, as amended) is amended to read:

20 "50-4-22. MINIMUM WAGES.--

21 A. Except as provided in Subsection C of this
22 section, an employer shall pay to an employee a minimum wage
23 rate of

24 [~~(1) prior to January 1, 2020, at least seven~~
25 ~~dollars fifty cents (\$7.50) an hour;~~

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

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

6 ~~(4) beginning January 1, 2022 and prior to~~
7 ~~January 1, 2023, at least eleven dollars fifty cents (\$11.50)~~
8 ~~an hour; and~~

9 ~~(5) on and after January 1, 2023]~~ at least
10 twelve dollars (\$12.00) an hour. As of July 1, 2023 and on
11 July 1 of each successive year, the minimum wage rate shall be
12 increased for the cost of living as provided in Subsection E of
13 this section.

14 B. An employer furnishing food, utilities, supplies
15 or housing to an employee who is engaged in agriculture may
16 deduct the reasonable value of such furnished items from any
17 wages due to the employee.

18 C. An employee who customarily and regularly
19 receives more than thirty dollars (\$30.00) a month in tips
20 shall be paid a minimum hourly wage ~~[as follows:~~

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

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

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

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

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

9 ~~(6) the employer may consider tips as part of~~
10 ~~wages, but the tips combined with the employer's cash wage~~
11 ~~shall not equal less than the minimum wage rate as provided in~~
12 ~~Subsection A of this section] that is twenty-five percent of~~
13 ~~the prevailing hourly minimum wage rate at the time the hours~~
14 ~~were worked; provided that the employer may consider tips as~~
15 ~~part of wages, but the tips combined with the employer's cash~~
16 ~~wage shall not equal less than the minimum wage rate as~~
17 ~~provided in Subsection A of this section. All tips received by~~
18 ~~such employees shall be retained by the employee, except that~~
19 ~~nothing in this section shall prohibit the pooling of tips~~
20 ~~among wait staff.~~

21 D. An employee shall not be required to work more
22 than forty hours in any week of seven days, unless the employee
23 is paid one and one-half times the employee's regular hourly
24 rate of pay for all hours worked in excess of forty hours. For
25 an employee who is paid a fixed salary for fluctuating hours

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1 and who is employed by an employer a majority of whose business
2 in New Mexico consists of providing investigative services to
3 the federal government, the hourly rate may be calculated in
4 accordance with the provisions of the federal Fair Labor
5 Standards Act of 1938 and the regulations pursuant to that act;
6 provided that in no case shall the hourly rate be less than the
7 federal minimum wage.

8 E. On July 1, 2023 and on July 1 of each successive
9 year, the minimum wage rate shall be increased by the increase
10 in the cost of living. The increase in the cost of living
11 shall be measured by the percentage increase of the consumer
12 price index in the immediately preceding calendar year for all
13 urban consumers, United States city average for all items, or a
14 successor index, as published by the United States department
15 of labor or a successor agency, with the amount of the minimum
16 wage rate increase rounded to the nearest multiple of five
17 cents (\$.05); provided that the minimum wage rate shall not be
18 adjusted downward as a result of a decrease in the cost of
19 living. The workforce solutions department shall publish by
20 May 1 of each year the adjusted minimum wage rates that shall
21 take effect the following July 1."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2023.