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HOUSE BILL 23

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO EMPLOYMENT; REQUIRING BACKGROUND ARTISTS TO BE PAID
WITHIN SEVEN DAYS; ENACTING THE BACKGROUND ARTIST ACT;
PROVIDING PROTECTIONS FOR BACKGROUND ARTISTS DURING EMPLOYMENT;
PROVIDING PENALTIES.

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

SECTION 1. Section 50-4-2 NMSA 1978 (being Laws 1937,
Chapter 109, Section 2, as amended) is amended to read:

"50-4-2. SEMIMONTHLY AND MONTHLY PAY DAYS.--

A. An employer in this state shall designate
regular pay days, not more than sixteen days apart, as days
fixed for the payment of wages to all employees paid in this
state. The employer shall pay for services rendered from the
first to the fifteenth days, inclusive, of any calendar month
by the twenty-fifth day of the month during which services are

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1 rendered, and for all services rendered from the sixteenth to
2 the last day of the month, inclusive, of any calendar month by
3 the tenth day of the succeeding month. Where computation of
4 earnings and of amounts due, preparation of payrolls and
5 issuance of paychecks are at a central location outside New
6 Mexico, the employer shall pay for services rendered from the
7 first to the fifteenth days, inclusive, of any calendar month
8 by the last of the month during which services are rendered,
9 and for all services rendered from the sixteenth to the last
10 day of the month, inclusive, of any calendar month by the
11 fifteenth day of the succeeding month.

12 B. Except as provided by rules of the department of
13 finance and administration for payment of salaries and wages to
14 state employees, other than employees of institutions of higher
15 education, promulgated pursuant to Section 10-7-2 NMSA 1978, an
16 employer shall pay wages in full, less lawful deductions and
17 less payroll deductions authorized by the employer and
18 employee. Wages shall be paid in lawful money of the United
19 States or in checks, payroll vouchers or drafts on banks,
20 convertible into cash on demand at full face value or, with the
21 voluntary authorization of the employer, employee and financial
22 institution, by deposit to the account of the employee in any
23 bank, savings and loan association, credit union or other
24 financial institution authorized by the United States or one of
25 the several states to receive deposits in the United States,

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1 without any reduction or deduction, except as may be
2 specifically stated in a written contract of hiring entered
3 into at the time of hiring. An employer shall provide an
4 employee with a written receipt that identifies the employer
5 and sets forth the employee's gross pay, the number of hours
6 worked by the employee, the total wages and benefits earned by
7 the employee and an itemized listing of all deductions withheld
8 from the employee's gross pay. Nothing contained in Sections
9 50-4-1 through 50-4-12 NMSA 1978 shall in any way limit or
10 prohibit the payment of wages or compensation at more frequent
11 intervals than those set forth in this section. Where the
12 labor or service to be rendered to an employer is recompensed
13 on a task, piece or commission basis or other method of
14 calculating the amount of wages to be paid, other than a
15 definite and fixed amount in cash, the employer and the
16 employee may agree in writing at the time of hiring that the
17 wages shall be paid on a monthly basis, on or before the tenth
18 day of the succeeding calendar month.

19 C. Notwithstanding the provisions of Subsection A
20 of this section, an employer may pay professional,
21 administrative or executive employees or employees employed
22 in the capacity of outside salesman, as those terms are
23 defined under the federal Fair Labor Standards Act, one time
24 per month, excluding those employees whose wages are subject
25 to provisions of collective bargaining agreements.

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1 D. Notwithstanding the provisions of Subsection A
2 of this section, an employer of a background artist, as that
3 term is defined in the Background Artist Act, shall designate
4 regular pay days, not more than sixteen days apart, as days
5 fixed for the payment of wages to all background artists.
6 The employer shall pay for services rendered from the first
7 to the fifteenth days, inclusive, of any calendar month by
8 the twenty-second day of the month during which services are
9 rendered, and for all services rendered from the sixteenth to
10 the last day of the month, inclusive, of any calendar month
11 by the seventh day of the succeeding month."

12 SECTION 2. [NEW MATERIAL] SHORT TITLE.--Sections 2
13 through 6 of this act may be cited as the "Background Artist
14 Act".

15 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
16 Background Artist Act:

17 A. "background artist" means:

18 (1) a person who is not a performing artist
19 but is a person of atmospheric business whose work includes
20 atmospheric noise, normal actions, gestures and facial
21 expressions of that person's assignment;

22 (2) a person of atmospheric business whose
23 work includes special abilities that are not stunts; or

24 (3) a person who is a substitute for another
25 actor, whether photographed as a double or acting as a stand-

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1 in; and

2 B. "department" means the workforce solutions
3 department.

4 SECTION 4. [NEW MATERIAL] BACKGROUND ARTIST'S BILL OF
5 RIGHTS.--

6 A. An employer of a background artist shall:

7 (1) provide a safe and healthful workplace,
8 including access to shade, water, heating and cooling;

9 (2) provide separate and private changing
10 rooms for adults and children;

11 (3) maintain a workplace that is free from
12 sexual harassment in accordance with the Human Rights Act;
13 and

14 (4) gather information upon employment on
15 any physical or mental disability or serious medical
16 condition of a background artist and provide accommodation
17 appropriate for such disability or condition, unless such
18 accommodation is unreasonable or an undue hardship in
19 accordance with the Human Rights Act.

20 B. An employer of a background artist shall not
21 retaliate against a background artist for assertion of rights
22 provided in the Background Artist Act or any other applicable
23 law. Retaliation includes to discharge or to demote a
24 background artist, to discriminate in matters of
25 compensation, terms, conditions or privileges of employment

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1 or an employer's refusal to hire or promote a background
2 artist.

3 SECTION 5. [NEW MATERIAL] PAYMENT FOR ALL WORK
4 REQUIRED--RECORDS--ENFORCEMENT.--

5 A. An employer shall pay a background artist for
6 all hours worked or otherwise due and owed to the background
7 artist. Failure to pay for each day and all hours worked is
8 a violation of the Background Artist Act. A person who fails
9 to pay a background artist for work performed or time due is
10 liable for full payment of the wages not paid and civil
11 damages equal to twice the value of the unpaid wages, court
12 costs and attorney fees.

13 B. An employer of a background artist shall
14 maintain true and accurate records of the background artists
15 employed and of the hours worked and wages paid to the
16 background artists, including itemization of any compensation
17 owed for travel, required medical tests or other expenses,
18 for at least one year after the entry of the record.

19 C. The department shall investigate complaints
20 and enforce the provisions of the Background Artist Act.

21 D. An employer of a background artist that is
22 eligible for a film production tax credit pursuant to the
23 Film Production Tax Credit Act shall agree in writing to pay
24 a background artist for all days and hours worked as a
25 condition to be eligible for the film production tax credit.

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1 E. The department shall adopt rules necessary to
2 carry out the purposes of the Background Artist Act.

3 SECTION 6. [NEW MATERIAL] VIOLATIONS--MISDEMEANOR--
4 PENALTIES.--

5 A. A person who violates the provisions of the
6 Background Artist Act:

7 (1) on a first offense, is guilty of a
8 misdemeanor and upon conviction shall be sentenced pursuant
9 to Section 31-19-1 NMSA 1978; and

10 (2) for a second and subsequent offense, is
11 guilty of a misdemeanor and shall be sentenced pursuant to
12 Section 31-19-1 NMSA 1978 and shall be fined no less than two
13 hundred fifty dollars (\$250) and not more than one thousand
14 dollars (\$1,000) for each offense for which the person is
15 convicted, which fine shall not be suspended, deferred or
16 taken under advisement.

17 B. In addition to any other fees or fines that
18 may be imposed on a person convicted pursuant to this
19 section, the court may order the person to pay restitution
20 pursuant to Section 31-17-1 NMSA 1978.

21 C. Each occurrence of a violation for which a
22 person is convicted is a separate offense. Multiple
23 violations arising from transactions with the same person or
24 multiple violations arising from transactions with different
25 people shall be considered separate occurrences.

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