

1 SENATE BILL 85

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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8 FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

9
10 AN ACT

11 RELATING TO EMPLOYMENT; AMENDING A SECTION OF CHAPTER 50,
12 ARTICLE 4 NMSA 1978 AND A SECTION OF THE MINIMUM WAGE ACT TO
13 REMOVE THE EXCEPTION OF DOMESTIC SERVICE FROM WAGE PROTECTIONS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "50-4-1. DEFINITIONS.--~~(a)~~ Whenever used in ~~[this act]~~
19 Sections 50-4-1 through 50-4-12 NMSA 1978:

20 A. "employer" includes every person, firm,
21 partnership, association, corporation, receiver or other
22 officer of the court of this state and any agent or officer of
23 any of the above-mentioned classes employing any person in this
24 state, except ~~[employers of domestic labor in private homes~~
25 ~~and]~~ employers of livestock and agricultural labor; and

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underscored material = new
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underscored material = new
[bracketed material] = delete

1 [~~(b)~~] B. "wages" [~~shall mean~~] means all amounts at
2 which the labor or service rendered is recompensed, whether the
3 amount is fixed or ascertained on a time, task, piece or
4 commission basis or other method of calculating such amount."

5 **SECTION 2.** Section 50-4-21 NMSA 1978 (being Laws 1955,
6 Chapter 200, Section 2, as amended) is amended to read:

7 "50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

8 A. "employ" includes suffer or permit to work;

9 B. "employer" includes any individual, partnership,
10 association, corporation, business trust, legal representative
11 or any organized group of persons employing one or more
12 employees at any one time, acting directly or indirectly in the
13 interest of an employer in relation to an employee, but shall
14 not include the United States, the state or any political
15 subdivision of the state; provided, however, that for the
16 purposes of Subsection A of Section 50-4-22 NMSA 1978,
17 "employer" includes the state or any political subdivision of
18 the state; and

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

21 [~~(1)~~] ~~an individual employed in domestic~~
22 ~~service in or about a private home;~~

23 ~~(2)]~~ (1) an individual employed in a bona fide
24 executive, administrative or professional capacity and
25 forepersons, superintendents and supervisors;

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underscoring material = new
[bracketed material] = delete

1 [~~(3)~~] (2) an individual employed by the United
2 States, the state or any political subdivision of the state;
3 provided, however, that for the purposes of Subsection A of
4 Section 50-4-22 NMSA 1978, "employee" includes an individual
5 employed by the state or any political subdivision of the
6 state;

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

17 [~~(5)~~] (4) salespersons or employees
18 compensated upon piecework, flat rate schedules or commission
19 basis;

20 [~~(6)~~] (5) students regularly enrolled in
21 primary or secondary schools working after school hours or on
22 vacation;

23 [~~(7)~~] (6) registered apprentices and learners
24 otherwise provided by law;

25 [~~(8)~~] (7) persons eighteen years of age or

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underscored material = new
[bracketed material] = delete

1 under who are not students in a primary, secondary, vocational
2 or training school;

3 ~~[(9)]~~ (8) persons eighteen years of age or
4 under who are not graduates of a secondary school;

5 ~~[(10)]~~ (9) G.I. bill trainees while under
6 training;

7 ~~[(11)]~~ (10) seasonal employees of an employer
8 obtaining and holding a valid certificate issued annually by
9 the director of the labor relations division of the workforce
10 solutions department. The certificate shall state the job
11 designations and total number of employees to be exempted. In
12 approving or disapproving an application for a certificate of
13 exemption, the director shall consider the following:

14 (a) whether such employment shall be at
15 an educational, charitable or religious youth camp or retreat;

16 (b) that such employment will be of a
17 temporary nature;

18 (c) that the individual will be
19 furnished room and board in connection with such employment, or
20 if the camp or retreat is a day camp or retreat, the individual
21 will be furnished board in connection with such employment;

22 (d) the purposes for which the camp or
23 retreat is operated;

24 (e) the job classifications for the
25 positions to be exempted; and

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underscored material = new
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1 (f) any other factors that the director
2 deems necessary to consider;

3 [~~(12)~~] (11) any employee employed in
4 agriculture:

5 (a) if the employee is employed by an
6 employer who did not, during any calendar quarter during the
7 preceding calendar year, use more than five hundred [~~man-days~~]
8 person-days of agricultural labor;

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

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

21 (d) if the employee, other than an
22 employee described in Subparagraph (c) of this paragraph: 1)
23 is sixteen years of age or under and is employed as a
24 hand-harvest laborer, is paid on a piece-rate basis in an
25 operation that has been, and is generally recognized as having

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1 been, paid on a piece-rate basis in the region of employment;
2 2) is employed on the same farm as the employee's parent or
3 person standing in the place of the parent; and 3) is paid at
4 the same piece-rate as employees over age sixteen are paid on
5 the same farm; or

6 (e) if the employee is principally
7 engaged in the range production of livestock or in milk
8 production;

9 [~~(13)~~] (12) an employee engaged in the
10 handling, drying, packing, packaging, processing, freezing or
11 canning of any agricultural or horticultural commodity in its
12 unmanufactured state; or

13 [~~(14)~~] (13) employees of charitable, religious
14 or nonprofit organizations who reside on the premises of group
15 homes operated by such charitable, religious or nonprofit
16 organizations for persons who have a mental, emotional or
17 developmental disability."