

**NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS
LABOR RELATIONS DIVISION
NEW MEXICO MINIMUM WAGE ACT**

SECTION 50-4-21. DEFINITIONS. As used in the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978]

- A.** EMPLOY includes suffer or permit to work;
- B.** EMPLOYER includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of section 50-4-22 NMSA 1978, "employer" includes the state or any political subdivision of the state; and
- C.** EMPLOYEE includes an individual employed by an employer, but shall not include:
- 1) An individual employed in domestic service in or about a private home;
 - 2) An individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;
 - 3) An individual employed by the United States, the state or any political subdivisions of the state; provided, however, that for the purposes of Subsection A of Section 50-4-22 NMSA 1978, "employee" includes an individual employed by the state or any political subdivision of the state;
 - 4) An individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to an individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of the work performed by the individual;
 - 5) Salespersons or employees compensated upon piecework, flat rate schedules or commission basis;
 - 6) Students regularly enrolled in primary or secondary schools working after school hours or on vacation;
 - 7) Registered apprentices and learners otherwise provided by law;
 - 8) Persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;
 - 9) Persons eighteen years of age or under who are not graduates of a secondary school;
 - 10) G.I. bill trainees while under training;
 - 11) Seasonal employees of an employer obtaining and holding a valid certificate issued annually by the Director of Labor Relations Division of the workforce solutions department. The certificate shall state the job designations and total number of employees to be exempted. In approving or disapproving an application for a certificate of exemption, the Director shall consider the following:
 - a) Whether such employment shall be at an educational, charitable or religious youth camp or retreat;
 - b) That such employment will be of temporary nature;
 - c) That the individual will be furnished room and board in connection with such employment, or if the camp or retreat is a day camp or retreat, the individual will be furnished board in connection with such employment;
 - d) The purposes for which the camp or retreat is operated;
 - e) The job classifications for the positions to be exempted; and
 - f) Any other factors that the Director deems necessary to consider;
 - 12) Any employee employed in agriculture:
 - a) If the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor;
 - b) If the employee is the parent, spouse, child or other member of his employer's immediate family; for the purpose of this subsection, employer shall include the principal stockholder of a family corporation;
 - c) If the employee: 1) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation which has been and is customarily and generally recognized as having been paid on a piece-rate basis in the region of employment; 2) commutes daily from the employee's permanent residence to the farm on which the employee is so employed; 3) has been employed in agriculture less than thirteen weeks during the preceding calendar year;
 - d) If the employee, other than an employee described in Subparagraph (c) of this paragraph: 1) is sixteen years of age or under and is employed as a hand-harvest laborer, is paid on a piece rate basis in an operation which has been and is generally recognized as having been paid on a piece-rate basis in the region of employment; 2) is employed on the same farm as the employee's parent or person standing

- in the place of his parent; and 3) is paid at the same piece rate as employees over age sixteen are paid on the same farm; or
- e) If the employee is principally engaged in the range production of livestock or in milk production;
- 13) An employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agriculture or horticultural commodity in its unmanufactured state; or
- 14) Employees of charitable, religious or nonprofit organizations who reside on the premises of group homes operated by such charitable, religious or nonprofit organizations for persons who have a mental, emotionally or developmentally disabled persons.

SECTION 50-4-22 MINIMUM WAGES.

- A. An employer shall pay an employee the minimum wage rate of six dollars and fifty cents (\$6.50) an hour. As of January 01, 2009, an employer shall pay the minimum wage rate of seven dollars fifty cents (\$7.50) an hour.
- B. An employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.
- C. An employee who customarily and regularly receives more than thirty dollars (\$30) a month in tips shall be paid a minimum hourly wage of two dollars thirteen cents (\$2.13). The employer may consider tips as part of wages, but the tips combined with the employer's cash wage shall not equal less than the minimum wage rate as provided in Subsection A of this section. All tips received by such employees shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees.
- D. An employee shall not be required to work more than forty hours in any week of seven days, unless the employee is paid one and one-half times the employee's regular hourly rate of pay for all hours worked in excess of forty hours. For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government, the hourly rate may be calculated in accordance with the provisions of the federal Fair Labor Standards Act of 1938 and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage.

TEMPORARY STATE PREEMPTION—SAVING CLAUSE—

A). Except as provides in Subsection B of this section, cities, counties, home rule municipalities and other political subdivisions of the state shall not adopt or continue in effect any law or ordinance that would mandate a minimum wage rate higher than that set forth in the Minimum Wage Act. The provisions of this subsection expire on January 1, 2010.

B) A local law ordinance, whether advisory or self-executing, in effect on January 1, 2007 that provides for a higher minimum wage rate than that set forth in the Minimum Wage Act shall continue in full force and effect until repealed.

Section 4. **EFFECTIVE DATE**--The effective date of the provisions of this act is January 1, 2008.

SECTION 50-4-24. EMPLOYERS EXEMPT FROM OVERTIME PROVISION FOR CERTAIN EMPLOYEES.

Any employer of workers engaged in the ginning of cotton for market, in any place of employment located within a county where cotton is grown in commercial quantities, and each employee is employed for a period of not more than fourteen weeks in the aggregate in any calendar year, is exempt from the overtime provisions of Subsection D of Section 50-4-22 NMSA 1978.

SECTION 50-4-25. POSTING OF SUMMARY OF THE ACT. Every employer subject to the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978] shall keep a summary of it, furnished by the Director of Labor Relations Division without charge, posted in a conspicuous place on or about the premises wherein any person subject to the Minimum Wage Act is employed, and the summary shall clearly and conspicuously set fourth the current minimum wage.

SECTION 50-4-26. ENFORCEMENT.

- A. Penalties: (1) any employer who violates any of the foregoing provisions shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars (\$25.00) or more than three hundred dollars (\$300.00) or by imprisonment for not less than ten nor more than ninety days or by both fine and imprisonment; (2) it shall be the duty of the Director of Labor Relations Division to enforce and prosecute violations of the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978]. The Director is hereby empowered to institute in the name of the state of New Mexico an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides, or has his principal office or place of business for the purpose of prosecuting

violations. It shall be the duty of the district attorney for the district wherein any violation hereof occurs to aid and assist the Director of Labor Relations Division in the prosecution thereof.

- B. Employees' Remedies:** (1) any employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid minimum wages, as the case may be and in an additional equal amount as liquidated damages; (2) action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated or such employee or employees may designate an agent or representative to maintain such action before and in behalf of all employees similarly situated. The court in any action brought under Paragraph (2) shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorneys' fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.
- C. Retaliation Prohibited:** It is a violation of the Minimum Wage Act for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing another person about employment rights or other rights provided by the law.

SECTION 50-4-27. AUTHORITY OF DIRECTOR OF THE LABOR AND RELATIONS DIVISION TO PROMULGATE RULES; HEARING ON RULES; NOTICE; PUBLICATION. The Director of the Labor Relations Division shall have the authority to promulgate and issue rules and regulations necessary to administer and accomplish the purposes of the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978]. Such rules and regulations shall be adopted after notice and public hearing. A copy of the notice of hearing together with a copy of the proposed regulations shall be filed with the librarian of the Supreme Court library at least twenty days prior to the hearing. In addition, a copy of the notice of hearing shall be sent to all known interested persons. Any VIOLATIONS should be reported promptly to the New Mexico Department of Workforce Solutions, Labor Relations Division at:

Santa Fe Office	1596 Pacheco Street Ste 201, Santa Fe, NM 87501	(505) 827-6817
Albuquerque Office	625 Silver Ave SW Ste 410 Albuquerque, NM 87102	(505) 841-4400
Las Cruces Office	506 S. Main, Ste 10200, Las Cruces, NM 88004	(575) 524-6195