

AN ACT

RELATING TO LABOR; ENACTING THE DAY LABORER ACT; STRENGTHENING PROTECTION FOR DAY LABORERS; ESTABLISHING AND AMENDING PENALTIES FOR FAILURE TO PAY WAGES.

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

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Day Laborer Act".

Section 2. DEFINITIONS.--As used in the Day Laborer Act:

A. "check cashing service" means a business that for a fee offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments;

B. "day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional or irregular and that is for a limited time period;

C. "day labor service agency" means an entity, including a labor broker or labor pool, that provides day laborers to third-party employers and that charges the third-party employer for the service of providing day laborers for employment offered by the employer;

D. "day laborer" means a person who contracts for day labor employment with a day labor service agency;

E. "department" means the labor department;

F. "office worker" means a person employed to perform clerical, secretarial or other semiskilled or skilled work that is predominantly performed in an office setting;

G. "payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked; and

H. "third-party employer" means a person that contracts with a day labor service agency for the employment of day laborers.

Section 3. EXEMPTIONS.--The following agencies that provide employees on a short-term or otherwise temporary basis are exempted from complying with the provisions of the Day Laborer Act:

A. business entities registered as farm labor contractors;

B. temporary services employment agencies where advanced applications, a screening process and job interviews are required;

C. a labor union hiring hall; and

D. a labor bureau or employment office operated by a business entity for the sole purpose of employing a person for its own use.

Section 4. DAY LABOR SERVICE AGENCY--THIRD-PARTY EMPLOYER--DUTIES.--

A. A day labor service agency shall compensate day laborers for work performed by providing or making available commonly accepted payment instruments that are payable in cash, on demand, at a financial institution.

B. At the time of payment of wages, a day labor service agency shall provide each day laborer with an itemized statement showing in detail each deduction made from wages.

C. In no event shall deductions made by a day labor service agency, other than those required by federal or state law, reduce a day laborer's wages below federal minimum wage for the hours worked.

D. A day labor service agency shall not restrict the right of a day laborer to accept a permanent position with a third-party employer to whom the day laborer has been referred for work or restrict the right of a third-party employer to offer employment to a day laborer.

E. A day labor service agency may collect a reasonable placement fee from a third-party employer.

#### Section 5. CHECK CASHING--NOTICE OF FEES.--

A. A check cashing service that is a day labor service agency or is operating within the office of a day labor service agency shall not charge a day laborer an amount in excess of two dollars (\$2.00) for cashing a check or payment instrument that is issued by the agency.

B. No fees may be charged for cashing a check or

payment instrument unless the day laborer:

(1) is given the option of being paid with a check or payment instrument that is payable without a fee at a local financial institution; and

(2) voluntarily elects to cash the check or payment instrument at the day labor service agency or at a check cashing service operating within the office of the day labor service agency.

C. A day labor service agency or a check cashing service that is a day labor service agency or is operating within the office of a day labor service agency shall post notices in the area where cashing of checks or payment instruments occurs. The notices shall be clearly visible and easily readable and shall state the fee for cashing a check or payment instrument. Notices shall be posted in English, Spanish and any other written language where a high percentage of the workers speak that language. In areas where the day labor service agency employs Navajo workers and the check cashing service cashes checks of Navajo workers, notice shall be posted in Navajo.

Section 6. PAYMENT FOR ALL WORK REQUIRED--RECORDS--  
ENFORCEMENT.--

A. A day labor service agency shall pay a day laborer for all hours worked or otherwise due and owed to the day laborer. Failure to pay for each day and all hours worked

is a violation of the Day Laborer Act. A person who fails to pay a day laborer for work performed or time due is liable for full payment of the wages not paid and civil damages equal to twice the value of the unpaid wages, court costs and attorney fees and costs.

B. A day labor service agency shall maintain true and accurate records of the day laborers employed and of the hours worked and wages paid to the day laborers for at least one year after the entry of the record.

C. The department shall investigate complaints and enforce the provisions of the Day Laborer Act.

D. The department shall adopt rules necessary to implement the Day Laborer Act.

Section 7. VIOLATIONS--MISDEMEANOR--PENALTIES.--

A. A person who violates the provisions of the Day Laborer Act:

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

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

taken under advisement.

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

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

Section 8. Section 50-4-10 NMSA 1978 (being Laws 1937, Chapter 109, Section 11) is amended to read:

"50-4-10. FORFEITURE AND PENALTIES.--

A. An employer who violates or fails to comply with any provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and upon conviction for a first offense shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

B. A person who is convicted of a second or subsequent offense of violating or failing to comply with any provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 and shall be fined no less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) for each offense for which the person is

