

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 489

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PAYMENT OF WAGES; PROVIDING EMPLOYEES PROTECTION  
FROM RETALIATION; EXTENDING THE STATUTE OF LIMITATIONS PERIOD;  
PROVIDING FOR INJUNCTIVE RELIEF; INCREASING LIABILITY FOR  
FAILURE TO PAY WAGES; PROVIDING PENALTIES.

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

Section 1. Section 37-1-5 NMSA 1978 (being Laws 1947,  
Chapter 44, Section 1) is amended to read:

"37-1-5. ACTIONS FOR WAGE AND HOUR VIOLATIONS.--~~[All  
suits and actions for the recovery of unpaid overtime  
compensation or damages in connection therewith, whether  
arising under contract or a state or a federal law or  
administrative ruling, shall be brought within one (1) year  
after the accrual of such a cause of action or three (3) months  
after this Act takes effect, whichever is the later and not~~

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1 ~~thereafter. Nothing in this Act shall be construed as reviving~~  
2 ~~or extending any cause of action which may now or hereafter be~~  
3 ~~barred by any other statute.] A civil action to enforce any~~  
4 ~~provision of Chapter 50, Article 4 NMSA 1978 shall be commenced~~  
5 ~~within three years after a violation last occurs. The three-~~  
6 ~~year period shall be tolled during a labor relations division~~  
7 ~~of the workforce solutions department investigation of an~~  
8 ~~employer, but such an investigation shall not be deemed a~~  
9 ~~prerequisite to a person bringing a civil action, nor shall it~~  
10 ~~operate to bar a civil action brought pursuant to Chapter 50,~~  
11 ~~Article 4 NMSA 1978."~~

12 Section 2. A new section of Chapter 50, Article 4 NMSA  
13 1978 is enacted to read:

14 "[NEW MATERIAL] CONTINUING COURSE OF CONDUCT.--A civil  
15 action to enforce any provision of Chapter 50, Article 4 NMSA  
16 1978 may encompass all violations that occurred as part of a  
17 continuing course of conduct regardless of the date on which  
18 they occurred."

19 Section 3. A new section of the Minimum Wage Act is  
20 enacted to read:

21 "[NEW MATERIAL] RETALIATION PROHIBITED.--It is a violation  
22 of the Minimum Wage Act for an employer or any other person to  
23 discharge, demote, deny promotion to or in any other way  
24 discriminate against a person in the terms or conditions of  
25 employment in retaliation for the person asserting a claim or

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1 right pursuant to the Minimum Wage Act or assisting another  
 2 person to do so or for informing another person about  
 3 employment rights or other rights provided by law."

4 Section 4. Section 50-4-26 NMSA 1978 (being Laws 1955,  
 5 Chapter 200, Section 5, as amended) is amended to read:

6 "50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

7 A. [~~Penalties:—(1)—Any~~] An employer who violates  
 8 any of the [~~foregoing~~] provisions [~~shall be deemed~~] of the  
 9 Minimum Wage Act is guilty of a misdemeanor and [~~shall be~~  
 10 ~~punished by a fine of not less than twenty-five dollars (\$25)~~  
 11 ~~or more than three hundred dollars (\$300) or by imprisonment~~  
 12 ~~for not less than ten nor more than ninety days or by both such~~  
 13 ~~fine and imprisonment~~] upon conviction shall be sentenced  
 14 pursuant to the provisions of Section 31-19-1 NMSA 1978.

15 [~~(2) It shall be the duty of the state labor~~  
 16 ~~commissioner to~~] B. The director of the labor relations  
 17 division of the workforce solutions department shall enforce  
 18 and prosecute violations of the Minimum Wage Act. The [~~labor~~  
 19 ~~commissioner is hereby empowered to~~] director may institute in  
 20 the name of the state [~~of New Mexico~~] an action in the district  
 21 court of the county wherein the employer who has failed to  
 22 comply with the Minimum Wage Act resides or has [~~his~~] a  
 23 principal office or place of business, for the purpose of  
 24 prosecuting violations. [~~It shall be the duty of~~] The district  
 25 attorney for the district wherein any violation hereof occurs

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1 ~~[to]~~ shall aid and assist the ~~[labor commissioner]~~ director in  
2 the prosecution. ~~[thereof.~~

3 ~~B. Employees' remedies: (1) Any]~~ C. In addition  
4 to penalties provided pursuant to this section, an employer who  
5 violates any provision of Section [59-3-22 New Mexico Statutes  
6 Annotated, 1953 Compilation] 50-4-22 NMSA 1978 shall be liable  
7 to the employees affected in the amount of their unpaid or  
8 underpaid minimum wages [as the case may be, and in an  
9 additional equal amount as liquidated damages] plus interest,  
10 and in an additional amount equal to twice the unpaid or  
11 underpaid wages.

12 ~~[(2)]~~ D. An action to recover such liability may be  
13 maintained in any court of competent jurisdiction by any one or  
14 more employees for and ~~[in]~~ on behalf of ~~[himself or~~  
15 ~~themselves]~~ the employee or employees and for other employees  
16 similarly situated, or such employee or employees may designate  
17 an agent or representative to maintain such action ~~[before and~~  
18 ~~in]~~ on behalf of all employees similarly situated.

19 E. The court in any action brought under ~~[Paragraph~~  
20 ~~(2)]~~ Subsection D of this section shall, in addition to any  
21 judgment awarded to the plaintiff or plaintiffs, allow costs of  
22 the action and reasonable ~~[attorneys']~~ attorney fees to be paid  
23 by the defendant. In any proceedings brought pursuant to the  
24 provisions of this section, the employee shall not be required  
25 to pay any filing fee or other court costs necessarily incurred

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1 in such proceedings.

2 F. In addition to any remedy or punishment provided  
3 pursuant to the Minimum Wage Act, a court may order appropriate  
4 injunctive relief, including requiring an employer to post in  
5 the place of business a notice describing violations by the  
6 employer as found by the court or a copy of a cease and desist  
7 order applicable to the employer."

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