

SENATE CORPORATIONS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 437

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

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO LABOR; RAISING THE MINIMUM WAGE; PROVIDING A
SEPARATE MINIMUM WAGE FOR EMPLOYED SECONDARY SCHOOL STUDENTS
CC→Hf1→; ~~REQUIRING THAT PUBLIC CONTRACTS PROVIDE FOR INCREASED
CONTRACTOR AND SUBCONTRACTOR REIMBURSEMENT AND WORKER WAGE
INCREASES IN ACCORDANCE WITH AND CONCURRENT WITH STATE MINIMUM
WAGE INCREASES←HF1←~~CC.

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

SECTION 1. Section 50-4-21 NMSA 1978 (being Laws 1955,

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Chapter 200, Section 2, as amended) is amended to read:

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

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 subdivision 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

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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)]~~ (6) registered apprentices and learners otherwise provided by law;

~~[(8)]~~ (7) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;

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

~~[(10)]~~ HLVMC → (9) (8) ← HLVMC G.I. bill trainees while under training;

~~[(11)]~~ HLVMC → (10) (9) ← HLVMC seasonal employees of an employer obtaining and holding a valid certificate issued annually by the director of the labor relations division of the workforce solutions department. The

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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 a 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)~~] HLVMC → ~~(11)~~ (10) ← HLVMC 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~~] person-days of agricultural labor;

(b) if the employee is the parent,

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spouse, child or other member of the employer's immediate family; for the purpose of this subsection, the 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 that 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; and 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 that 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 the 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)~~] HLVMC → ~~(12)~~ (11) ← HLVMC an employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state; or

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[~~(14)~~] HLVMC → ~~(13)~~ (12) ← HLVMC 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, emotional or developmental disability."

SECTION 2. Section 50-4-22 NMSA 1978 (being Laws 1955, Chapter 200, Section 3, as amended) is amended to read:

"50-4-22. MINIMUM WAGES.--

~~[A. An employer shall pay an employee the minimum wage rate of six dollars fifty cents (\$6.50) an hour. As of January 1, 2009, an employer shall pay the minimum wage rate of seven dollars fifty cents (\$7.50) an hour.]~~

HLVMC → A. Except as provided in Subsection B of this section, an employer shall pay to an employee a minimum wage rate of:

(1) prior to October 1, 2019, at least seven dollars fifty cents (\$7.50) an hour;

(2) beginning October 1, 2019 and prior to April 1, 2020, at least nine dollars twenty-five cents (\$9.25) an hour;

(3) beginning April 1, 2020 and prior to January 1, 2021, at least ten dollars (\$10.00) an hour;

(4) beginning January 1, 2021 and prior to January 1, 2022, at least ten dollars fifty cents (\$10.50) an hour; and

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~~(5) on and after January 1, 2022, at least eleven dollars (\$11.00) an hour.~~←HLVMC

CC→HLVMC→A. ~~Except as provided in Subsection B or C of this section, an employer shall pay to an employee minimum wage rate of:~~

~~(1) prior to January 1, 2020, at least seven dollars fifty cents (\$7.50) an hour;~~

~~(2) beginning January 1, 2020 and prior to January 1, 2021, at least ten dollars (\$10.00) an hour;~~

~~(3) beginning January 1, 2021 and prior to January 1, 2022, at least eleven dollars (\$11.00) an hour; and~~

~~(4) on and after January 1, 2022, at least twelve dollars (\$12.00) an hour.~~

~~B. Beginning January 1, 2023 and on January 1 of each successive year, the minimum wage rate provided in Subsection A of this section shall be increased by the lesser of three percent or the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor or its successor agency, with the amount of the minimum wage rate increase rounded to the nearest multiple of five cents (\$.05); however, the minimum wage rate shall not be adjusted downward as a result of a decrease in the cost of living. The workforce solutions department shall publish by October 1 of each year~~

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~~the adjusted minimum wage rates that shall take effect the following January 1.~~←HLVMC←CC

CC→A. Except as provided in Subsection B or D of this section, an employer shall pay to an employee a minimum wage rate of:

(1) prior to January 1, 2020, at least seven dollars fifty cents (\$7.50) an hour;

(2) beginning January 1, 2020 and prior to January 1, 2021, at least nine dollars (\$9.00) an hour;

(3) beginning January 1, 2021 and prior to January 1, 2022, at least ten dollars fifty cents (\$10.50) an hour;

(4) beginning January 1, 2022 and prior to January 1, 2023, at least eleven dollars fifty cents (\$11.50) an hour; and

(5) on and after January 1, 2023, at least twelve dollars (\$12.00) an hour.←CC

CC→~~HLVMC→B. C.~~←HLVMC B.←CC On and after
HLVMC→~~October 1, 2019~~←HLVMC HLVMC→January 1, 2020←HLVMC, an employer who employs a student regularly enrolled in secondary school to work after school hours or when school is not in session shall pay the student a minimum wage rate of at least eight dollars fifty cents (\$8.50) an hour unless the student is employed pursuant to Subsection CC→~~HLVMC→D E~~←HLVMC D←CC of this section, in which case the provisions of that subsection

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shall apply to the student. In each case, the employer shall follow the provisions of the Child Labor Act, and Subsection CC→HLVMC→E F←HLVMC E←CC of this section shall not apply to the student.

[B.] CC→HLVMC→C. D.←HLVMC C.←CC 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.

[G.] CC→HLVMC→D. E.←HLVMC D.←CC An employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid a minimum hourly wage [of two dollars thirteen cents (\$2.13). The] HLVMC→as follows:

(1) prior to October 1, 2019, at least two dollars thirteen cents (\$2.13) an hour;

(2) beginning October 1, 2019 and prior to April 1, 2020, at least two dollars thirty-eight cents (\$2.38) an hour;

(3) on and after April 1, 2020, at least two dollars fifty cents (\$2.50) an hour; and

(4) the←HLVMC CC→HLVMC→that is thirty percent of the minimum hourly wage rate provided in Subsection A of this section at the time the hours were worked in addition to tips received. The←HLVMC←CC CC→as follows:

(1) prior to CC→October 1, 2019, at least two dollars thirteen cents (\$2.13) an hour;

(2) beginning October 1, 2019 and prior to April 1, 2020, at least two dollars thirty-eight cents (\$2.38) an hour;

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~~(3) on and after April 1, 2020, at least two dollars fifty cents (\$2.50) an hour; and~~

~~(4) the~~ ←CC ←CC CC→ January 1, 2020, at least two dollars thirteen cents (\$2.13) an hour;

(2) beginning January 1, 2020 and prior to January 1, 2021, at least two dollars thirty-five cents (\$2.35) an hour;

(3) beginning January 1, 2021 and prior to January 1, 2022, at least two dollars fifty-five cents (\$2.55) an hour;

(4) beginning January 1, 2022 and prior to January 1, 2023, at least two dollars eighty cents (\$2.80) an hour;

(5) on and after January 1, 2023, at least three dollars (\$3.00) an hour; and

(6) ←CC 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 HLVMC → ~~employees~~ ←HLVMC HLVMC → wait staff ←HLVMC.

[D.] CC → HLVMC → ~~E. F.~~ ←HLVMC E. ←CC 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

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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."

CC→Hf1→~~SECTION 3. A new section of the Minimum Wage Act is enacted to read:~~

~~"[NEW MATERIAL] PUBLIC CONTRACTS--SERVICES--MINIMUM WAGE INCREASES.--"~~

~~A. Beginning July 1, 2019, a state agency that contracts for services shall include in the terms of that contract:~~

~~(1) a provision for increasing reimbursement so the contractor and any subcontractor to that contract are held harmless for any wage increase resulting from an increase in the state minimum wage; and~~

~~(2) a requirement that individuals employed pursuant to that contract or a subcontract of that contract who are paid the state minimum wage shall receive wage increases in accordance with and concurrent with increases in the state minimum wage.~~

~~B. As used in this section:~~

~~(1) "contract" means any agreement for the procurement of services;~~

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~~(2) "services" means the furnishing of labor, time or effort by a contractor or subcontractor not involving the delivery of a specific end product other than reports and other materials that are merely incidental to the required performance; and~~

~~(3) "subcontract" means a contract subordinate to another superordinate contract, which subcontract is to procure in whole or in part services to be procured under the terms of the superordinate contract."~~ ←Hfl ←CC

CC → SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2020. ←CC

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