

SENATE CORPORATIONS AND TRANSPORTATION  
COMMITTEE SUBSTITUTE FOR  
SENATE BILL 437

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

AN ACT

RELATING TO LABOR; RAISING THE MINIMUM WAGE; PROVIDING A  
SEPARATE MINIMUM WAGE FOR EMPLOYED SECONDARY SCHOOL STUDENTS.

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

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

.214792.1

1 purposes of Subsection A of Section 50-4-22 NMSA 1978,  
2 "employer" includes the state or any political subdivision of  
3 the state; and

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

6 (1) an individual employed in domestic service  
7 in or about a private home;

8 (2) an individual employed in a bona fide  
9 executive, administrative or professional capacity and  
10 forepersons, superintendents and supervisors;

11 (3) an individual employed by the United  
12 States, the state or any political subdivision of the state;  
13 provided, however, that for the purposes of Subsection A of  
14 Section 50-4-22 NMSA 1978, "employee" includes an individual  
15 employed by the state or any political subdivision of the  
16 state;

17 (4) an individual engaged in the activities of  
18 an educational, charitable, religious or nonprofit organization  
19 where the employer-employee relationship does not, in fact,  
20 exist or where the services rendered to such organizations are  
21 on a voluntary basis. The employer-employee relationship shall  
22 not be deemed to exist with respect to an individual being  
23 served for purposes of rehabilitation by a charitable or  
24 nonprofit organization, notwithstanding the payment to the  
25 individual of a stipend based upon the value of the work

.214792.1

1 performed by the individual;

2 (5) salespersons or employees compensated upon  
3 piecework, flat rate schedules or commission basis;

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

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

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

11 [~~(9)]~~ (8) persons eighteen years of age or  
12 under who are not graduates of a secondary school;

13 [~~(10)]~~ (9) G.I. bill trainees while under  
14 training;

15 [~~(11)]~~ (10) seasonal employees of an employer  
16 obtaining and holding a valid certificate issued annually by  
17 the director of the labor relations division of the workforce  
18 solutions department. The certificate shall state the job  
19 designations and total number of employees to be exempted. In  
20 approving or disapproving an application for a certificate of  
21 exemption, the director shall consider the following:

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

24 (b) that such employment will be of a  
25 temporary nature;

.214792.1

1 (c) that the individual will be  
2 furnished room and board in connection with such employment, or  
3 if the camp or retreat is a day camp or retreat, the individual  
4 will be furnished board in connection with such employment;

5 (d) the purposes for which the camp or  
6 retreat is operated;

7 (e) the job classifications for the  
8 positions to be exempted; and

9 (f) any other factors that the director  
10 deems necessary to consider;

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

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

17 (b) if the employee is the parent,  
18 spouse, child or other member of the employer's immediate  
19 family; for the purpose of this subsection, the employer shall  
20 include the principal stockholder of a family corporation;

21 (c) if the employee: 1) is employed as  
22 a hand-harvest laborer and is paid on a piece-rate basis in an  
23 operation that has been, and is customarily and generally  
24 recognized as having been, paid on a piece-rate basis in the  
25 region of employment; 2) commutes daily from the employee's

.214792.1

1 permanent residence to the farm on which the employee is so  
2 employed; and 3) has been employed in agriculture less than  
3 thirteen weeks during the preceding calendar year;

4 (d) if the employee, other than an  
5 employee described in Subparagraph (c) of this paragraph: 1)  
6 is sixteen years of age or under and is employed as a hand-  
7 harvest laborer, is paid on a piece-rate basis in an operation  
8 that has been, and is generally recognized as having been, paid  
9 on a piece-rate basis in the region of employment; 2) is  
10 employed on the same farm as the employee's parent or person  
11 standing in the place of the parent; and 3) is paid at the same  
12 piece-rate as employees over age sixteen are paid on the same  
13 farm; or

14 (e) if the employee is principally  
15 engaged in the range production of livestock or in milk  
16 production;

17 [~~(13)~~] (12) an employee engaged in the  
18 handling, drying, packing, packaging, processing, freezing or  
19 canning of any agricultural or horticultural commodity in its  
20 unmanufactured state; or

21 [~~(14)~~] (13) employees of charitable, religious  
22 or nonprofit organizations who reside on the premises of group  
23 homes operated by such charitable, religious or nonprofit  
24 organizations for persons who have a mental, emotional or  
25 developmental disability."

.214792.1

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

3           "50-4-22. MINIMUM WAGES.--

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

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

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

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

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

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

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

23           B. On and after October 1, 2019, an employer who  
24 employs a student regularly enrolled in secondary school to  
25 work after school hours or when school is not in session shall

1 pay the student a minimum wage rate of at least eight dollars  
 2 fifty cents (\$8.50) an hour unless the student is employed  
 3 pursuant to Subsection D of this section, in which case the  
 4 provisions of that subsection shall apply to the student. In  
 5 each case, the employer shall follow the provisions of the  
 6 Child Labor Act, and Subsection E of this section shall not  
 7 apply to the student.

8 ~~[B.]~~ C. An employer furnishing food, utilities,  
 9 supplies or housing to an employee who is engaged in  
 10 agriculture may deduct the reasonable value of such furnished  
 11 items from any wages due to the employee.

12 ~~[C.]~~ D. An employee who customarily and regularly  
 13 receives more than thirty dollars (\$30.00) a month in tips  
 14 shall be paid a minimum hourly wage ~~[of two dollars thirteen~~  
 15 ~~cents (\$2.13). The]~~ as follows:

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

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

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

23 (4) the employer may consider tips as part of  
 24 wages, but the tips combined with the employer's cash wage  
 25 shall not equal less than the minimum wage rate as provided in

.214792.1

1 Subsection A of this section. All tips received by such  
2 employees shall be retained by the employee, except that  
3 nothing in this section shall prohibit the pooling of tips  
4 among employees.

5 ~~[D.]~~ E. An employee shall not be required to work  
6 more than forty hours in any week of seven days, unless the  
7 employee is paid one and one-half times the employee's regular  
8 hourly rate of pay for all hours worked in excess of forty  
9 hours. For an employee who is paid a fixed salary for  
10 fluctuating hours and who is employed by an employer a majority  
11 of whose business in New Mexico consists of providing  
12 investigative services to the federal government, the hourly  
13 rate may be calculated in accordance with the provisions of the  
14 federal Fair Labor Standards Act of 1938 and the regulations  
15 pursuant to that act; provided that in no case shall the hourly  
16 rate be less than the federal minimum wage."