

SENATE BILL 35

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Jeff Steinborn

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO EMPLOYMENT; REMOVING THE EXCEPTION TO THE MINIMUM WAGE REQUIREMENT FOR SECONDARY SCHOOL STUDENTS HCEDC→; **AMENDING THE DEFINITION OF "EMPLOYEE" IN THE MINIMUM WAGE ACT**←HCEDC .

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

HCEDC→**SECTION 1. Section 50-4-21 NMSA 1978 (being Laws 1955, Chapter 200, Section 2, as amended by Laws 2019, Chapter 114, Section 1 and by Laws 2019, Chapter 242, Section 2) is**

.218495.1AIC March 10, 2021 (3:20pm)

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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 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 a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;

(2) 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 state;

(3) an individual engaged in the activities of

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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;

(4) salespersons or employees compensated upon piecework, flat rate schedules or commission basis;

(5) registered apprentices and learners otherwise provided by law;

~~[(6) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;~~

~~(7)]~~ (6) G.I. bill trainees while under training;

~~[(8)]~~ (7) 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 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:

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(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;

[~~(9)~~] (8) 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 person-days of agricultural labor;

(b) if the employee is the parent, 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

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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;

~~(9)~~ (9) an employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state; or

~~(10)~~ (10) 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."←HCEDC

SECTION HCEDC→1.←HCEDC HCEDC→2.←HCEDC 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. Except as provided in Subsection [B or D] C 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.

~~[B. On and after January 1, 2020, an employer who employs a student regularly enrolled in secondary school to work after school hours or when school is not in session shall~~

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~~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 D of this section, in which case the provisions of that subsection shall apply to the student. In each case, the employer shall follow the provisions of the Child Labor Act, and Subsection E of this section shall not apply to the student.~~

~~G.]~~ 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.

~~[D.]~~ C. An employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid a minimum hourly wage as follows:

(1) prior to 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;

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

(6) 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 wait staff.

~~[E.]~~ 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."