AN ACT

RELATING TO LABOR; INCREASING THE MINIMUM WAGE FOR CERTAIN
EMPLOYEES; PROVIDING AN ANNUAL ADJUSTMENT TO THE MINIMUM WAGES
BASED ON INFLATIONARY MEASURES.

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. "consumer price index" means the consumer price
index, not seasonally adjusted, for all urban consumers, United
States city average for all items, or its successor index, as
published by the United States department of labor for a twelve
month period ending September 30;

[А-] B. "employ" includes suffer or permit to work;

[Б-] C. "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. D. "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 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) G.I. bill trainees while under training;

(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:

(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;

(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 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) 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) 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. Except as provided in [Subsection] Subsections C
and E 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 and prior to January 1, 2024, at least twelve dollars ($12.00) an hour;
6. beginning January 1, 2024 and prior to January 1, 2025, at least thirteen dollars fifty cents ($13.50) an hour;
7. beginning January 1, 2025 and prior to January 1, 2026, at least fifteen dollars fifty cents ($15.50) an hour; and
8. on and after January 1, 2026, fifteen dollars fifty cents ($15.50) an hour adjusted annually pursuant to the provisions of Subsection E of this section.

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.

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;

(5) on and after January 1, 2023 and prior to
January 1, 2026, at least three dollars ($3.00) an hour;

(6) on and after January 1, 2026, at least
three dollars ($3.00) an hour adjusted pursuant to the
provisions of Subsection E of this section; and

[(6) (7)] 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.

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.

E. On January 1, 2026 and on January 1 of each
successive year, the minimum wage rate provided by Paragraph
(4) of Subsection A and Paragraph (5) of Subsection C of this
section shall be adjusted by multiplying the minimum wage as of
January 1, 2025 by a fraction, the numerator of which is the
consumer price index ending in September of the previous year
and the denominator of which is the consumer price index ending
September 2024; provided that the minimum wage rate shall not
be adjusted downward as a result of a decrease in the consumer
price index. By November 1, 2025 and by November 1 of each
successive year, the workforce solutions department shall post
on its website and otherwise notify employers of the minimum
wage for the next year."