

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 25

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

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;

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

[B.] C. "employer" includes any individual,

1 partnership, association, corporation, business trust, legal  
2 representative or organized group of persons employing one or  
3 more employees at any one time, acting directly or indirectly  
4 in the interest of an employer in relation to an employee, but  
5 shall not include the United States, the state or any political  
6 subdivision of the state; provided, however, that for the  
7 purposes of Subsection A of Section 50-4-22 NMSA 1978,  
8 "employer" includes the state or any political subdivision of  
9 the state; and

10 ~~[G-]~~ D. "employee" includes an individual employed  
11 by an employer, but shall not include:

12 (1) an individual employed in a bona fide  
13 executive, administrative or professional capacity and  
14 forepersons, superintendents and supervisors;

15 (2) an individual employed by the United  
16 States, the state or any political subdivision of the state;  
17 provided, however, that for the purposes of Subsection A of  
18 Section 50-4-22 NMSA 1978, "employee" includes an individual  
19 employed by the state or any political subdivision of the  
20 state;

21 (3) an individual engaged in the activities of  
22 an educational, charitable, religious or nonprofit organization  
23 where the employer-employee relationship does not, in fact,  
24 exist or where the services rendered to such organizations are  
25 on a voluntary basis. The employer-employee relationship shall

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1 not be deemed to exist with respect to an individual being  
 2 served for purposes of rehabilitation by a charitable or  
 3 nonprofit organization, notwithstanding the payment to the  
 4 individual of a stipend based upon the value of the work  
 5 performed by the individual;

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

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

10 (6) G.I. bill trainees while under training;

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

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

20 (b) that such employment will be of a  
 21 temporary nature;

22 (c) that the individual will be  
 23 furnished room and board in connection with such employment, or  
 24 if the camp or retreat is a day camp or retreat, the individual  
 25 will be furnished board in connection with such employment;

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1 (d) the purposes for which the camp or  
2 retreat is operated;

3 (e) the job classifications for the  
4 positions to be exempted; and

5 (f) any other factors that the director  
6 deems necessary to consider;

7 (8) any employee employed in agriculture:

8 (a) if the employee is employed by an  
9 employer who did not, during any calendar quarter during the  
10 preceding calendar year, use more than five hundred person-days  
11 of agricultural labor;

12 (b) if the employee is the parent,  
13 spouse, child or other member of the employer's immediate  
14 family; for the purpose of this subsection, the employer shall  
15 include the principal stockholder of a family corporation;

16 (c) if the employee: 1) is employed as  
17 a hand-harvest laborer and is paid on a piece-rate basis in an  
18 operation that has been, and is customarily and generally  
19 recognized as having been, paid on a piece-rate basis in the  
20 region of employment; 2) commutes daily from the employee's  
21 permanent residence to the farm on which the employee is so  
22 employed; and 3) has been employed in agriculture less than  
23 thirteen weeks during the preceding calendar year;

24 (d) if the employee, other than an  
25 employee described in Subparagraph (c) of this paragraph: 1)

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1 is sixteen years of age or under and is employed as a hand-  
 2 harvest laborer, is paid on a piece-rate basis in an operation  
 3 that has been, and is generally recognized as having been, paid  
 4 on a piece-rate basis in the region of employment; 2) is  
 5 employed on the same farm as the employee's parent or person  
 6 standing in the place of the parent; and 3) is paid at the same  
 7 piece-rate as employees over age sixteen are paid on the same  
 8 farm; or

9 (e) if the employee is principally  
 10 engaged in the range production of livestock or in milk  
 11 production;

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

16 (10) employees of charitable, religious or  
 17 nonprofit organizations who reside on the premises of group  
 18 homes operated by such charitable, religious or nonprofit  
 19 organizations for persons who have a mental, emotional or  
 20 developmental disability."

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

23 "50-4-22. MINIMUM WAGES.--

24 A. Except as provided in [~~Subsection~~] Subsections C  
 25 and E of this section, an employer shall pay to an employee a

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1 minimum wage rate of:

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

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

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

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

12 ~~(5) on and after] (2) beginning January 1,~~  
13 ~~2023 and prior to January 1, 2024, at least twelve dollars~~  
14 ~~(\$12.00) an hour;~~

15 (3) beginning January 1, 2024 and prior to  
16 January 1, 2025, at least thirteen dollars fifty cents (\$13.50)  
17 an hour;

18 (4) beginning January 1, 2025 and prior to  
19 January 1, 2026, at least fifteen dollars fifty cents (\$15.50)  
20 an hour; and

21 (5) on and after January 1, 2026, fifteen  
22 dollars fifty cents (\$15.50) an hour adjusted annually pursuant  
23 to the provisions of Subsection E of this section.

24 B. An employer furnishing food, utilities, supplies  
25 or housing to an employee who is engaged in agriculture may

1 deduct the reasonable value of such furnished items from any  
 2 wages due to the employee.

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

6 (1) prior to January 1, 2020, at least two  
 7 dollars thirteen cents (\$2.13) an hour;

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

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

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

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

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

22 [~~6~~] (7) the employer may consider tips as  
 23 part of wages, but the tips combined with the employer's cash  
 24 wage shall not equal less than the minimum wage rate as  
 25 provided in Subsection A of this section. All tips received by

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1 such employees shall be retained by the employee, except that  
2 nothing in this section shall prohibit the pooling of tips  
3 among wait staff.

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

16 E. On January 1, 2026 and on January 1 of each  
17 successive year, the minimum wage rate provided by Paragraph  
18 (4) of Subsection A and Paragraph (5) of Subsection C of this  
19 section shall be adjusted by multiplying the minimum wage as of  
20 January 1, 2025 by a fraction, the numerator of which is the  
21 consumer price index ending in September of the previous year  
22 and the denominator of which is the consumer price index ending  
23 September 2024; provided that the minimum wage rate shall not  
24 be adjusted downward as a result of a decrease in the consumer  
25 price index. By November 1, 2025 and by November 1 of each

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1 successive year, the workforce solutions department shall post  
2 on its website and otherwise notify employers of the minimum  
3 wage for the next year."

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