

1 AN ACT
2 RELATING TO EMPLOYMENT LAW; AMENDING THE MINIMUM WAGE ACT;
3 EXEMPTING EMPLOYEES OF THE STATE OR A POLITICAL SUBDIVISION
4 OF THE STATE FROM CERTAIN PROVISIONS OF THE MINIMUM WAGE ACT;
5 RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
6 LAWS 2007; DECLARING AN EMERGENCY.

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

9 Section 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
10 Chapter 200, Section 2, as amended by Laws 2007, Chapter 46,
11 Section 45 and by Laws 2007, Chapter 47, Section 1) is
12 amended to read:

13 "50-4-21. DEFINITIONS.--As used in the Minimum Wage
14 Act:

- 15 A. "employ" includes suffer or permit to work;
- 16 B. "employer" includes any individual,
17 partnership, association, corporation, business trust, legal
18 representative or any organized group of persons employing
19 one or more employees at any one time, acting directly or
20 indirectly in the interest of an employer in relation to an
21 employee, but shall not include the United States, the state
22 or any political subdivision of the state; provided, however,
23 that for the purposes of Subsection A of Section 50-4-22 NMSA
24 1978, "employer" includes the state or any political
25 subdivision of the state; and

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

3 (1) an individual employed in domestic
4 service in or about a private home;

5 (2) an individual employed in a bona fide
6 executive, administrative or professional capacity and
7 forepersons, superintendents and supervisors;

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

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

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

1 (6) students regularly enrolled in primary
2 or secondary schools working after school hours or on
3 vacation;

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

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

9 (9) persons eighteen years of age or under
10 who are not graduates of a secondary school;

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

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

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

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

25 (c) that the individual will be

1 furnished room and board in connection with such employment,
2 or if the camp or retreat is a day camp or retreat, the
3 individual will be furnished board in connection with such
4 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) any employee employed in agriculture:

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

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

21 (c) if the employee: 1) is employed as
22 a hand-harvest laborer and is paid on a piece-rate basis in
23 an 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

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:

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

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

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

21 (14) employees of charitable, religious or
22 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."

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Section 2. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect
immediately. _____