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AN ACT

RELATING TO EMPLOYMENT; AMENDING A SECTION OF CHAPTER 50,  
ARTICLE 4 NMSA 1978 AND A SECTION OF THE MINIMUM WAGE ACT TO  
REMOVE THE EXCEPTION OF DOMESTIC SERVICE FROM WAGE  
PROTECTIONS.

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

SECTION 1. Section 50-4-1 NMSA 1978 (being Laws 1937,  
Chapter 109, Section 1) is amended to read:

"50-4-1. DEFINITIONS.--Whenever used in  
Sections 50-4-1 through 50-4-12 NMSA 1978:

A. "employer" includes every person, firm,  
partnership, association, corporation, receiver or other  
officer of the court of this state and any agent or officer  
of any of the above-mentioned classes employing any person in  
this state, except employers of livestock and agricultural  
labor; and

B. "wages" means all amounts at which the labor or  
service rendered is recompensed, whether the amount is fixed  
or ascertained on a time, task, piece or commission basis or  
other method of calculating such amount."

SECTION 2. 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:

1           A. "employ" includes suffer or permit to work;

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

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

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

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

23                   (3) an individual engaged in the activities  
24 of an educational, charitable, religious or nonprofit  
25 organization where the employer-employee relationship does

1 not, in fact, exist or where the services rendered to such  
2 organizations are on a voluntary basis. The  
3 employer-employee relationship shall not be deemed to exist  
4 with respect to an individual being served for purposes of  
5 rehabilitation by a charitable or nonprofit organization,  
6 notwithstanding the payment to the individual of a stipend  
7 based upon the value of the work performed by the individual;

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

10 (5) students regularly enrolled in primary  
11 or secondary schools working after school hours or on  
12 vacation;

13 (6) registered apprentices and learners  
14 otherwise provided by law;

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

18 (8) persons eighteen years of age or under  
19 who are not graduates of a secondary school;

20 (9) G.I. bill trainees while under training;

21 (10) seasonal employees of an employer  
22 obtaining and holding a valid certificate issued annually by  
23 the director of the labor relations division of the workforce  
24 solutions department. The certificate shall state the job  
25 designations and total number of employees to be exempted.

1 In approving or disapproving an application for a certificate  
2 of exemption, the director shall consider the following:

3 (a) whether such employment shall be at  
4 an educational, charitable or religious youth camp or  
5 retreat;

6 (b) that such employment will be of a  
7 temporary nature;

8 (c) that the individual will be  
9 furnished room and board in connection with such employment,  
10 or if the camp or retreat is a day camp or retreat, the  
11 individual will be furnished board in connection with such  
12 employment;

13 (d) the purposes for which the camp or  
14 retreat is operated;

15 (e) the job classifications for the  
16 positions to be exempted; and

17 (f) any other factors that the director  
18 deems necessary to consider;

19 (11) any employee employed in agriculture:

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

24 (b) if the employee is the parent,  
25 spouse, child or other member of the employer's immediate

1 family; for the purpose of this subsection, the employer  
2 shall include the principal stockholder of a family  
3 corporation;

4 (c) if the employee: 1) is employed as  
5 a hand-harvest laborer and is paid on a piece-rate basis in  
6 an operation that has been, and is customarily and generally  
7 recognized as having been, paid on a piece-rate basis in the  
8 region of employment; 2) commutes daily from the employee's  
9 permanent residence to the farm on which the employee is so  
10 employed; and 3) has been employed in agriculture less than  
11 thirteen weeks during the preceding calendar year;

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

22 (e) if the employee is principally  
23 engaged in the range production of livestock or in milk  
24 production;

25 (12) an employee engaged in the handling,

1 drying, packing, packaging, processing, freezing or canning  
2 of any agricultural or horticultural commodity in its  
3 unmanufactured state; or

4 (13) employees of charitable, religious or  
5 nonprofit organizations who reside on the premises of group  
6 homes operated by such charitable, religious or nonprofit  
7 organizations for persons who have a mental, emotional or  
8 developmental disability." \_\_\_\_\_

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