



## NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS LABOR RELATIONS DIVISION NEW MEXICO MINIMUM WAGE ACT

### **50-4-21. Definitions. As used in the Minimum Wage Act [[50-4-20](#) NMSA 1978]:**

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

B. "employer" includes any individual, partnership, association, corporation, business trust, legal representative or any 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 domestic service in or about a private home;

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

(3) 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;

(4) 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;

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

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

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

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

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

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

(11) 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;

(12) 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 man-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;

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

(14) 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.

#### **50-4-22. Minimum wages.**

A. An employer shall pay an employee the minimum wage rate of six dollars fifty cents (\$6.50) an hour. As of January 1, 2009, an employer shall pay the minimum wage rate of seven dollars fifty cents (\$7.50) an hour.

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 of two dollars thirteen cents (\$2.13). 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 employees.

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.

#### **50-4-22.1. Temporary state preemption; saving clause.**

A. Except as provided in Subsection B of this section, cities, counties, home rule municipalities and other political subdivisions of the state shall not adopt or continue in effect any law or ordinance that would mandate a minimum wage rate higher than that set forth in the Minimum Wage Act [50-4-20 NMSA 1978]. The provisions of this subsection expire on January 1, 2010.

B. A local law or ordinance, whether advisory or self-executing, in effect on January 1, 2007 that provides for a higher minimum wage rate than that set forth in the Minimum Wage Act shall continue in full force and effect until repealed.

**50-4-24. Employers exempt from overtime provisions for certain employees.**

A. An employer of workers engaged in the ginning of cotton for market, in a place of employment located within a county where cotton is grown in commercial quantities, is exempt from the overtime provisions of Subsection D of Section [50-4-22](#) NMSA 1978 if each employee is employed for a period of not more than fourteen weeks in the aggregate in a calendar year.

B. An employer of workers engaged in agriculture is exempt from the overtime provisions set forth in Subsection D of Section [50-4-22](#) NMSA 1978. As used in this subsection, "agriculture" has the meaning used in Section 203 of the federal Fair Labor Standards Act of 1938.

C. An employer is exempt from the overtime provisions set forth in Subsection D of Section [50-4-22](#) NMSA 1978 if the hours worked in excess of forty hours in a week of seven days are:

(1) worked by an employee of an air carrier providing scheduled passenger air transportation subject to Subchapter II of the federal Railway Labor Act or the air carrier's subsidiary that is subject to Subchapter II of the federal Railway Labor Act;

(2) not required by the employer; and

(3) arranged through a voluntary agreement among employees to trade scheduled work shifts; provided that the agreement shall:

(a) be in writing;

(b) be signed by the employees involved in the agreement;

(c) include a requirement that an employee who trades a scheduled work shift is responsible for working the shift so agreed to as part of the employee's regular work schedule; and

(d) not require an employee to work more than: 1) thirteen consecutive days; 2) sixteen hours in a single work day; 3) sixty hours within a single work week; or 4) can be required as provided in a collective bargaining agreement to which the employee is subject.

**50-4-25. Posting of summary of the act.**

Every employer subject to the Minimum Wage Act [[50-4-20](#) NMSA 1978] shall keep a summary of it, furnished by the labor commissioner [director of the labor and industrial division] without charge, posted in a conspicuous place on or about the premises wherein any person subject to the Minimum Wage Act is employed, and the summary shall clearly and conspicuously set forth the current minimum wage.

**50-4-26. Enforcement; penalties; employees' remedies.**

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section [31-19-1](#) NMSA 1978.

B. The director of the labor relations division of the workforce solutions department shall enforce and prosecute violations of the Minimum Wage Act. The director may institute in the name of the state an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein any violation hereof occurs shall aid and assist the director in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section [50-4-22](#) NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

E. The court in any action brought under Subsection D of this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the

defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

F. In addition to any remedy or punishment provided pursuant to the Minimum Wage Act, a court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer.

G. Civil actions and appeals of civil actions brought to collect unpaid or underpaid wages, interest and any other amounts due under this section shall be heard by the court at the earliest possible date and shall be entitled to a preference over all other civil actions, to the same extent as civil actions to collect contributions pursuant to Section [51-1-36](#) NMSA 1978, on the calendar of the court.

#### **50-4-26.1. Retaliation prohibited.**

It is a violation of the Minimum Wage Act [[50-4-20](#) NMSA 1978] for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing another person about employment rights or other rights provided by law.

#### **50-4-27. Authority of labor commissioner [director of the labor and industrial division] to promulgate rules; hearing on rules; notice; publication.**

The state labor commissioner [director of the labor and industrial division] shall have the authority to promulgate and issue rules and regulations necessary to administer and accomplish the purposes of the Minimum Wage Act [[50-4-19](#) to [50-4-30](#) NMSA 1978]. Such rules and regulations shall be adopted after notice and public hearing. A copy of the notice of hearing together with a copy of the proposed regulations shall be filed with the librarian of the supreme court library at least twenty days prior to the hearing. In addition, a copy of the notice of hearing shall be sent to all known interested persons. Any interested person shall have the right to appear and present evidence.

**Any VIOLATIONS should be reported promptly to the New Mexico Department of Workforce Solutions, Labor Relations Division at:**

**Albuquerque Office 121 Tijeras NE, Suite 3000, Albuquerque, NM 87102 (505) 841-4400**

**Las Cruces Office 226 South Alameda Blvd, Las Cruces, NM 88005 (575) 524-6195**

**Santa Fe Office 1596 Pacheco Street, Suite 201, Santa Fe, NM 87501 (505) 827-6817**