

1 SENATE BILL 437

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Clemente Sanchez

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10 AN ACT

11 RELATING TO LABOR; RAISING THE MINIMUM WAGE; PROVIDING A
12 SEPARATE MINIMUM WAGE FOR EMPLOYED SECONDARY SCHOOL STUDENTS.

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

15 SECTION 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
16 Chapter 200, Section 2, as amended) is amended to read:

17 "50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

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

19 B. "employer" includes any individual, partnership,
20 association, corporation, business trust, legal representative
21 or ~~any~~ organized group of persons employing one or more
22 employees at any one time, acting directly or indirectly in the
23 interest of an employer in relation to an employee, but shall
24 not include the United States, the state or any political
25 subdivision of the state; provided, however, that for the

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1 purposes of Subsection A of Section 50-4-22 NMSA 1978,
2 "employer" includes the state or any political subdivision of
3 the state; and

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

6 (1) an individual employed in domestic service
7 in or about a private home;

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

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

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

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1 performed by the individual;

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

4 [~~(6)~~] ~~students regularly enrolled in primary or~~
5 ~~secondary schools working after school hours or on vacation;~~

6 ~~(7)]~~ (6) registered apprentices and learners
7 otherwise provided by law;

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

11 [~~(9)]~~ (8) persons eighteen years of age or
12 under who are not graduates of a secondary school;

13 [~~(10)]~~ (9) G.I. bill trainees while under
14 training;

15 [~~(11)]~~ (10) seasonal employees of an employer
16 obtaining and holding a valid certificate issued annually by
17 the director of the labor relations division of the workforce
18 solutions department. The certificate shall state the job
19 designations and total number of employees to be exempted. In
20 approving or disapproving an application for a certificate of
21 exemption, the director shall consider the following:

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

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

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1 (c) that the individual will be
2 furnished room and board in connection with such employment, or
3 if the camp or retreat is a day camp or retreat, the individual
4 will be furnished board in connection with such 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)~~] (11) any employee employed in
12 agriculture:

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

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

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

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

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

17 [~~(13)~~] (12) an employee engaged in the
18 handling, drying, packing, packaging, processing, freezing or
19 canning of any agricultural or horticultural commodity in its
20 unmanufactured state; or

21 [~~(14)~~] (13) employees of charitable, religious
22 or 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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1 SECTION 2. Section 50-4-22 NMSA 1978 (being Laws 1955,
2 Chapter 200, Section 3, as amended) is amended to read:

3 "50-4-22. MINIMUM WAGES.--

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

8 A. Except as provided in Subsection B of this
9 section, an employer shall pay to an employee a minimum wage
10 rate of:

11 (1) prior to October 1, 2019, at least seven
12 dollars fifty cents (\$7.50) an hour;

13 (2) beginning October 1, 2019 and prior to
14 April 1, 2020, at least nine dollars twenty-five cents (\$9.25)
15 an hour; and

16 (3) on and after April 1, 2020, at least ten
17 dollars (\$10.00) an hour.

18 B. On and after October 1, 2019, an employer who
19 employs a student regularly enrolled in secondary school to
20 work after school hours or when school is not in session shall
21 pay the student a minimum wage rate of at least eight dollars
22 fifty cents (\$8.50) an hour unless the student is employed
23 pursuant to Subsection D of this section, in which case the
24 provisions of that subsection shall apply to the student. In
25 each case, the employer shall follow the provisions of the

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1 Child Labor Act, and Subsection E of this section shall not
2 apply to the student.

3 ~~[B.]~~ C. An employer furnishing food, utilities,
4 supplies or housing to an employee who is engaged in
5 agriculture may deduct the reasonable value of such furnished
6 items from any wages due to the employee.

7 ~~[G.]~~ D. An employee who customarily and regularly
8 receives more than thirty dollars (\$30.00) a month in tips
9 shall be paid a minimum hourly wage ~~[of two dollars thirteen~~
10 ~~cents (\$2.13). The]~~ as follows:

11 (1) prior to October 1, 2019, at least two
12 dollars thirteen cents (\$2.13) an hour;

13 (2) beginning October 1, 2019 and prior to
14 April 1, 2020, at least two dollars thirty-eight cents (\$2.38)
15 an hour;

16 (3) on and after April 1, 2020, at least three
17 dollars (\$3.00) an hour; and

18 (4) the employer may consider tips as part of
19 wages, but the tips combined with the employer's cash wage
20 shall not equal less than the minimum wage rate as provided in
21 Subsection A of this section. All tips received by such
22 employees shall be retained by the employee, except that
23 nothing in this section shall prohibit the pooling of tips
24 among employees.

25 ~~[D.]~~ E. An employee shall not be required to work

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1 more than forty hours in any week of seven days, unless the
2 employee is paid one and one-half times the employee's regular
3 hourly rate of pay for all hours worked in excess of forty
4 hours. For an employee who is paid a fixed salary for
5 fluctuating hours and who is employed by an employer a majority
6 of whose business in New Mexico consists of providing
7 investigative services to the federal government, the hourly
8 rate may be calculated in accordance with the provisions of the
9 federal Fair Labor Standards Act of 1938 and the regulations
10 pursuant to that act; provided that in no case shall the hourly
11 rate be less than the federal minimum wage."

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