

HOUSE BILL 28

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

INTRODUCED BY

Miguel P. Garcia

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LABOR; PROVIDING AN ANNUAL COST-OF-LIVING INCREASE TO THE STATE MINIMUM WAGE RATE BEGINNING IN HLVMC→2023←HLVMC HLVMC→2024←HLVMC ; PROVIDING THAT CERTAIN TIPPED EMPLOYEES RECEIVE AN HOURLY RATE THAT IS TWENTY-FIVE PERCENT OF THE PREVAILING HOURLY MINIMUM WAGE RATE PLUS TIPS HLVMC→; **ADDING A DEFINITION OF "CONSUMER PRICE INDEX"**←HLVMC .

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

.223787.2AIC January 26, 2023 (5:23pm)

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HLVMC→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, partnership, association, corporation, business trust, legal representative or 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-]~~ D. "employee" includes an individual employed by an employer, but shall not include:

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

(2) an individual employed by the United

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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;

(3) 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;

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

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

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

(7) 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

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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;

(8) 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 person-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;

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(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;

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

(10) 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."←HLVMC

SECTION HLVMC→1.←HLVMC HLVMC→2.←HLVMC Section 50-4-22 NMSA 1978 (being Laws 1955, Chapter 200, Section 3, as amended) is amended to read:

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

A. Except as provided in Subsection C of this section, an employer shall pay to an employee a minimum wage rate of

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

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

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

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

~~(5) on and after January 1, 2023] at least twelve dollars (\$12.00) an hour. As of HLVMC→July 1,~~

~~2023~~←HLVMC HLVMC→January 1, 2024←HLVMC and on HLVMC→July

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~~1~~←HLVMC HLVMC→**January 1**←HLVMC of each successive year, the minimum wage rate shall be increased for the cost of living as provided in Subsection E of this section.

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 [~~as follows:~~

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

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

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

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

~~(5) on and after January 1, 2023, at least three dollars (\$3.00) an hour; and~~

~~(6) the employer may consider tips as part of wages, but the tips combined with the employer's cash wage~~

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~~shall not equal less than the minimum wage rate as provided in Subsection A of this section]~~ that is twenty-five percent of the prevailing hourly minimum wage rate at the time the hours were worked; provided that 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 wait staff.

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.

E. On HLVMC→July 1, 2023←HLVMC HLVMC→January 1, 2024←HLVMC and on HLVMC→July 1←HLVMC HLVMC→January 1←HLVMC of each successive year, the minimum wage rate shall be increased

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by the increase in the cost of living. The increase in the cost of living shall be HLVMC→~~measured by the percentage increase of the consumer price index in the immediately preceding calendar year for all urban consumers, United States city average for all items, or a successor index, as published by the United States department of labor or a successor agency~~←HLVMC HLVMC→adjusted by multiplying the minimum wage as of January 1, 2023 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending in September 2022←HLVMC , with the amount of the minimum wage rate increase rounded to the nearest multiple of five cents (\$.05); provided that the minimum wage rate shall not be adjusted downward as a result of a decrease in the cost of living. HLVMC→~~The workforce solutions department shall publish by May 1 of each year the adjusted minimum wage rates that shall take effect the following July 1.~~←HLVMC HLVMC→By November 1, 2023 and by November 1 of each successive year, the workforce solutions department shall post on its website or otherwise notify employers of the minimum wage for the following year."←HLVMC

SECTION HLVMC→~~2.~~←HLVMC HLVMC→~~3.~~←HLVMC EFFECTIVE DATE.--

The effective date of the provisions of this act is July 1, 2023.