

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 28

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

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO LABOR; PROVIDING AN ANNUAL COST-OF-LIVING INCREASE TO THE STATE MINIMUM WAGE RATE BEGINNING IN 2023; PROVIDING THAT CERTAIN TIPPED EMPLOYEES RECEIVE AN HOURLY RATE THAT IS TWENTY-FIVE PERCENT OF THE PREVAILING HOURLY MINIMUM WAGE RATE PLUS TIPS.

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

SECTION 1. 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;~~

underscored material = new  
[bracketed material] = delete

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

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

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

9                   ~~(5) on and after January 1, 2023]~~ at least  
10 twelve dollars (\$12.00) an hour. As of July 1, 2023 and on  
11 July 1 of each successive year, the minimum wage rate shall be  
12 increased for the cost of living as provided in Subsection E of  
13 this section.

14                   B. An employer furnishing food, utilities, supplies  
15 or housing to an employee who is engaged in agriculture may  
16 deduct the reasonable value of such furnished items from any  
17 wages due to the employee.

18                   C. An employee who customarily and regularly  
19 receives more than thirty dollars (\$30.00) a month in tips  
20 shall be paid a minimum hourly wage ~~[as follows:~~

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

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

.223787.2

underscoring material = new  
[bracketed material] = delete

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

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

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

9                   ~~(6) the employer may consider tips as part of~~  
10                  ~~wages, but the tips combined with the employer's cash wage~~  
11                  ~~shall not equal less than the minimum wage rate as provided in~~  
12                  ~~Subsection A of this section] that is twenty-five percent of~~  
13                  ~~the prevailing hourly minimum wage rate at the time the hours~~  
14                  ~~were worked; provided that the employer may consider tips as~~  
15                  ~~part of wages, but the tips combined with the employer's cash~~  
16                  ~~wage shall not equal less than the minimum wage rate as~~  
17                  ~~provided in Subsection A of this section. All tips received by~~  
18                  ~~such employees shall be retained by the employee, except that~~  
19                  ~~nothing in this section shall prohibit the pooling of tips~~  
20                  ~~among wait staff.~~

21                  D. An employee shall not be required to work more  
22                  than forty hours in any week of seven days, unless the employee  
23                  is paid one and one-half times the employee's regular hourly  
24                  rate of pay for all hours worked in excess of forty hours. For  
25                  an employee who is paid a fixed salary for fluctuating hours

.223787.2

underscoring material = new  
[bracketed material] = delete

1 and who is employed by an employer a majority of whose business  
2 in New Mexico consists of providing investigative services to  
3 the federal government, the hourly rate may be calculated in  
4 accordance with the provisions of the federal Fair Labor  
5 Standards Act of 1938 and the regulations pursuant to that act;  
6 provided that in no case shall the hourly rate be less than the  
7 federal minimum wage.

8 E. On July 1, 2023 and on July 1 of each successive  
9 year, the minimum wage rate shall be increased by the increase  
10 in the cost of living. The increase in the cost of living  
11 shall be measured by the percentage increase of the consumer  
12 price index in the immediately preceding calendar year for all  
13 urban consumers, United States city average for all items, or a  
14 successor index, as published by the United States department  
15 of labor or a successor agency, with the amount of the minimum  
16 wage rate increase rounded to the nearest multiple of five  
17 cents (\$.05); provided that the minimum wage rate shall not be  
18 adjusted downward as a result of a decrease in the cost of  
19 living. The workforce solutions department shall publish by  
20 May 1 of each year the adjusted minimum wage rates that shall  
21 take effect the following July 1."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2023.