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AN ACT

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

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

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. "employ" includes suffer or permit to work;

B. "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. "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

1 executive, administrative or professional capacity and
2 forepersons, superintendents and supervisors;

3 (3) an individual employed by the United
4 States, the state or any political subdivision of the state;
5 provided, however, that for the purposes of Subsection A of
6 Section 50-4-22 NMSA 1978, "employee" includes an individual
7 employed by the state or any political subdivision of the
8 state;

9 (4) an individual engaged in the activities
10 of an educational, charitable, religious or nonprofit
11 organization where the employer-employee relationship does
12 not, in fact, exist or where the services rendered to such
13 organizations are on a voluntary basis. The employer-
14 employee relationship shall not be deemed to exist with
15 respect to an individual being served for purposes of
16 rehabilitation by a charitable or nonprofit organization,
17 notwithstanding the payment to the individual of a stipend
18 based upon the value of the work performed by the individual;

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

21 (6) registered apprentices and learners
22 otherwise provided by law;

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

1 (8) G.I. bill trainees while under training;

2 (9) seasonal employees of an employer

3 obtaining and holding a valid certificate issued annually by
4 the director of the labor relations division of the workforce
5 solutions department. The certificate shall state the job
6 designations and total number of employees to be exempted.

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

9 (a) whether such employment shall be at
10 an educational, charitable or religious youth camp or
11 retreat;

12 (b) that such employment will be of a
13 temporary nature;

14 (c) that the individual will be
15 furnished room and board in connection with such employment,
16 or if the camp or retreat is a day camp or retreat, the
17 individual will be furnished board in connection with such
18 employment;

19 (d) the purposes for which the camp or
20 retreat is operated;

21 (e) the job classifications for the
22 positions to be exempted; and

23 (f) any other factors that the director
24 deems necessary to consider;

25 (10) any employee employed in agriculture:

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

5 (b) if the employee is the parent,
6 spouse, child or other member of the employer's immediate
7 family; for the purpose of this subsection, the employer
8 shall include the principal stockholder of a family
9 corporation;

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

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

1 3) is paid at the same piece-rate as employees over age
2 sixteen are paid on the same farm; or

3 (e) if the employee is principally
4 engaged in the range production of livestock or in milk
5 production;

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

10 (12) employees of charitable, religious or
11 nonprofit organizations who reside on the premises of group
12 homes operated by such charitable, religious or nonprofit
13 organizations for persons who have a mental, emotional or
14 developmental disability."

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

17 "50-4-22. MINIMUM WAGES.--

18 A. Except as provided in Subsection B or D of this
19 section, an employer shall pay to an employee a minimum wage
20 rate of:

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

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

25 (3) beginning January 1, 2021 and prior to

1 January 1, 2022, at least ten dollars fifty cents (\$10.50) an
2 hour;

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

6 (5) on and after January 1, 2023, at least
7 twelve dollars (\$12.00) an hour.

8 B. On and after January 1, 2020, an employer who
9 employs a student regularly enrolled in secondary school to
10 work after school hours or when school is not in session
11 shall pay the student a minimum wage rate of at least eight
12 dollars fifty cents (\$8.50) an hour unless the student is
13 employed pursuant to Subsection D of this section, in which
14 case the provisions of that subsection shall apply to the
15 student. In each case, the employer shall follow the
16 provisions of the Child Labor Act, and Subsection E of this
17 section shall not apply to the student.

18 C. An employer furnishing food, utilities,
19 supplies or housing to an employee who is engaged in
20 agriculture may deduct the reasonable value of such furnished
21 items from any wages due to the employee.

22 D. An employee who customarily and regularly
23 receives more than thirty dollars (\$30.00) a month in tips
24 shall be paid a minimum hourly wage as follows:

25 (1) prior to January 1, 2020, at least two

1 dollars thirteen cents (\$2.13) an hour;

2 (2) beginning January 1, 2020 and prior to
3 January 1, 2021, at least two dollars thirty-five cents
4 (\$2.35) an hour;

5 (3) beginning January 1, 2021 and prior to
6 January 1, 2022, at least two dollars fifty-five cents
7 (\$2.55) an hour;

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

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

13 (6) the employer may consider tips as part of
14 wages, but the tips combined with the employer's cash wage
15 shall not equal less than the minimum wage rate as provided
16 in Subsection A of this section. All tips received by such
17 employees shall be retained by the employee, except that
18 nothing in this section shall prohibit the pooling of tips
19 among wait staff.

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

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

8 SECTION 3. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is January 1, 2020. _____

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