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HOUSE BILL 180

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Stephanie Maez

AN ACT

RELATING TO EMPLOYMENT; INCLUDING CERTAIN PERSONS EIGHTEEN
YEARS OF AGE OR YOUNGER IN THE DEFINITION OF "EMPLOYEE" IN THE
MINIMUM WAGE ACT.

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 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

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

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

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

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

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

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

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1 individual of a stipend based upon the value of the work
2 performed by the individual;

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

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

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

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

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

14 ~~(10)]~~ (8) G.I. bill trainees while under
15 training;

16 ~~[(11)]~~ (9) seasonal employees of an employer
17 obtaining and holding a valid certificate issued annually by
18 the director of the labor relations division of the workforce
19 solutions department. The certificate shall state the job
20 designations and total number of employees to be exempted. In
21 approving or disapproving an application for a certificate of
22 exemption, the director shall consider the following:

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

25 (b) that such employment will be of a

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1 temporary nature;

2 (c) that the individual will be
3 furnished room and board in connection with such employment, or
4 if the camp or retreat is a day camp or retreat, the individual
5 will be furnished board in connection with such employment;

6 (d) the purposes for which the camp or
7 retreat is operated;

8 (e) the job classifications for the
9 positions to be exempted; and

10 (f) any other factors that the director
11 deems necessary to consider;

12 [~~(12)~~] (10) any employee employed in
13 agriculture:

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

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

22 (c) if the employee: 1) is employed as
23 a hand-harvest laborer and is paid on a piece-rate basis in an
24 operation that has been, and is customarily and generally
25 recognized as having been, paid on a piece-rate basis in the

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1 region of employment; 2) commutes daily from the employee's
2 permanent residence to the farm on which the employee is so
3 employed; and 3) has been employed in agriculture less than
4 thirteen weeks during the preceding calendar year;

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

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

18 [~~(13)~~] (11) an employee engaged in the
19 handling, drying, packing, packaging, processing, freezing or
20 canning of any agricultural or horticultural commodity in its
21 unmanufactured state; or

22 [~~(14)~~] (12) employees of charitable, religious
23 or nonprofit organizations who reside on the premises of group
24 homes operated by such charitable, religious or nonprofit
25 organizations for persons who have a mental, emotional or

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1 developmental disability."

2 SECTION 2. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2015.

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