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SENATE BILL 351

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

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO EMPLOYMENT; INCLUDING DAIRY WORKERS IN THE
DEFINITION OF "EMPLOYEE" AND IN THE OVERTIME PROTECTION
PROVISIONS OF 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 who
10 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) G.I. bill trainees while under training;

15 (11) 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) any employee employed in agriculture:

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

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

20 (c) if the employee: 1) is employed as
21 a hand-harvest laborer and is paid on a piece-rate basis in an
22 operation that has been, and is customarily and generally
23 recognized as having been, paid on a piece-rate basis in the
24 region of employment; 2) commutes daily from the employee's
25 permanent residence to the farm on which the employee is so

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1 employed; and 3) has been employed in agriculture less than
2 thirteen weeks during the preceding calendar year;

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

13 (e) if the employee is principally
14 engaged in the range production of livestock [~~or in milk~~
15 ~~production~~];

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

20 (14) employees of charitable, religious or
21 nonprofit organizations who reside on the premises of group
22 homes operated by such charitable, religious or nonprofit
23 organizations for persons who have a mental, emotional or
24 developmental disability."

25 SECTION 2. Section 50-4-24 NMSA 1978 (being Laws 2013,

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1 Chapter 216, Section 2) is amended to read:

2 "50-4-24. EMPLOYERS EXEMPT FROM OVERTIME PROVISIONS FOR
3 CERTAIN EMPLOYEES.--

4 A. An employer of workers engaged in the ginning of
5 cotton for market, in a place of employment located within a
6 county where cotton is grown in commercial quantities is exempt
7 from the overtime provisions of Subsection D of Section 50-4-22
8 NMSA 1978 if each employee is employed for a period of not more
9 than fourteen weeks in the aggregate in a calendar year.

10 B. An employer of workers engaged in agriculture is
11 exempt from the overtime provisions set forth in Subsection D
12 of Section 50-4-22 NMSA 1978. As used in this subsection:

13 (1) "agriculture" has the meaning used in
14 Section 203 of the federal Fair Labor Standards Act, except
15 "agriculture" does not include dairying; and

16 (2) "workers engaged in agriculture" does not
17 include a worker engaged in milk production who is not the
18 spouse, father, father-in-law, mother, mother-in-law, son,
19 son-in-law, daughter, daughter-in-law, brother, brother-in-law,
20 sister or sister-in-law of the employer."

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

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