CHAPTER 50
Employment Law

ARTICLE 1
Labor and Industrial Commission

50-1-1. Commission created; selection, term and qualifications of members.

A. There is created a three-member "labor and industrial commission." The governor shall appoint two members with the consent of the senate who shall hold office at the pleasure of the governor for terms of four years. One member appointed by the governor shall be a person who, on account of his previous vocation, employment or affiliation can be classed as a representative of employers and the other member appointed by the governor shall be a person who, on account of his previous vocation, employment or affiliation, can be classed as a representative of employees. The third member shall be appointed by the other two members and shall hold office at the pleasure of the appointing members for a term of four years. The third member shall be a person who, on account of his previous vocation, employment or affiliation, cannot be classed as a representative of employers or employees. Not more than two members of the commission shall belong to the same political party. If a vacancy occurs in a position appointed by the governor between sessions of the legislature the position shall be filled by the governor. A person appointed by the governor to fill a vacancy on the commission between sessions shall serve until the next regular legislative session. The governor shall designate a chairman of the commission.

B. Members of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1978 Comp., § 50-1-1, enacted by Laws 1979, ch. 204, § 3.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Repeals and reenactments. — Laws 1977, ch. 252, § 26, repealed 59-1-1, 1953 Comp., relating to creation of the labor and industrial commission and the selection, term and qualifications of its members, and enacted a former 50-1-1 NMSA 1978.

Laws 1979, ch. 204, § 3, repealed former 50-1-1 NMSA 1978, relating to definitions of "labor and industrial commission" and "labor commissioner," and enacted a new section.

Compiler's notes. — The labor and industrial commission is administratively attached to the Workforce Solutions Department. *See* 9-26-7 NMSA 1978.

Wage collection authority. — This article and article 4 of this chapter do not specifically provide the division with the authority to issue judgments or warrants for the collection of wages due; rather, these statutes simply allow the division to prosecute a wage collection action in magistrate court or district court if it determines that an employee's wage claim is "valid and enforceable." *Southworth v. Santa Fe Servs., Inc.*, 1998-NMCA-109, 125 N.M. 489, 963 P.2d 566.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Employer's duty to furnish information regarding financial status to employees' representative under National Labor Relations Act, 106 A.L.R. Fed. 694.

50-1-1.1, 50-1-1.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 342, § 34 repealed 50-1-1.1 and 50-1-1.2 NMSA 1978, as enacted by Laws 1979, ch. 204, §§ 4, 5 relating to the appointment and term and the seal of the labor commissioner, effective July 1, 1987.

50-1-1.3. Oath of commission members and commissioners[; bond of commissioner].

The members of the labor and industrial commission shall before entering upon the duties of their respective offices take an oath for the faithful discharge of those duties.

History: 1978 Comp., § 50-1-1.3, enacted by Laws 1979, ch. 204, § 6; 1987, ch. 342, § 26.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Compiler's notes. — The provisions regarding bond of the commissioner, referred to in the catchline, were deleted in the amendment by Laws 1987, ch. 342, § 26.

The 1987 amendment, effective July 1, 1987, deleted "and the labor commissioner" following "commission" and deleted the former second sentence which read "The labor commissioner shall give bond as provided in the Surety Bond Act".

50-1-1.4. Meetings of labor and industrial commission; chairman; functions.

A. It shall be the duty of the labor and industrial commission to meet at the call of the chairman; provided, however, that any two members may petition the chairman to call a meeting, and the chairman shall thereupon set a date for the meeting not to exceed five days from receipt of the petition.

B. The commission shall receive reports from the secretary and act in an advisory capacity to the secretary in the enforcement of labor legislation.

History: 1978 Comp., § 50-1-1.4, enacted by Laws 1979, ch. 204, § 7; 1987, ch. 342, § 27.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

The 1987 amendment, effective July 1, 1987, designated the two paragraphs as Subsections A and B, and, in Subsection B, substituted "from the secretary" for "from the labor commissioner" and "to the secretary" for "to the governor".

50-1-1.5. Repealed.

History: 1978 Comp., § 50-1-1.5, enacted by Laws 1979, ch. 204, § 8; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 50-1-1.5 NMSA 1978, as enacted by Laws 1979, ch. 204, § 8, relating to the office of the labor commissioner, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA on *NMOneSource.com*.

50-1-1.6. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 342, § 34 repealed 50-1-1.6 NMSA 1978, as enacted by Laws 1979, ch. 204, § 9, relating to the powers and duties of the labor commissioner, effective July 1, 1987.

50-1-2. Hearings; location; notice; conduct; witness fees; subpoenas; penalty.

The director of the labor and industrial division shall have the power to hold hearings upon, and therein examine witnesses, administer oaths and take testimony in, all matters specified in any complaint with him filed and relating to his duties and the requirements of Chapter 50, Article 1 NMSA 1978, which hearings shall be held in some suitable place in the vicinity in which the testimony to be taken is applicable, and may issue subpoena for and compel the attendance of witnesses at such hearings; provided, however, that the director of the labor and industrial division shall serve upon the employer and such employees as he deems necessary, a written notice of the time, place, purpose and scope of the hearing at least ten days prior to the date thereof. At the hearing, the employer and any employees to be affected by any of the matters and things mentioned in the notice shall have the right to appear in person or by counsel, to cross-examine witnesses and to introduce such testimony as is competent, relevant and material to the subject, purpose and scope of the hearing as stated in the notice; provided, however, that no witness fees shall be paid to any witness unless he is required to testify at a place more than five miles from his place of residence, in which event the witness shall be paid the same fees as a witness before a district court. Any person duly subpoenaed under the provisions of this section who willfully refuses or neglects to testify at the time and place named in the subpoena shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or by imprisonment in the county jail not less than ten days nor more than thirty days or by both such fine and imprisonment.

History: Laws 1931, ch. 9, § 8; 1941 Comp., § 57-108; 1953 Comp., § 59-1-8; 1987, ch. 342, § 28.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

Cross references. — For fees of witnesses in district court, *see* 38-6-4 NMSA 1978.

The 1987 amendment, effective July 1, 1987, twice substituted "director of the labor and industrial division" for "labor commissioner" in the first sentence and made minor stylistic changes throughout the section.

Administrator's findings. — The administrative proceeding provided by this section appears to function solely as a preliminary determination of whether a wage claim has enough merit to warrant the division's prosecution of an enforcement action in court on an employee's behalf; such a preliminary determination by the administrator may be a prerequisite to prosecution in some instances, but does not necessarily have any preclusive effect once the prosecution in court has begun. *Southworth v. Santa Fe Servs., Inc.*, 1998-NMCA-109, 125 N.M. 489, 963 P.2d 566.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 294 et seq.

Right to assistance of counsel in administrative proceedings, 33 A.L.R.3d 229.

51A C.J.S. Labor Relations §§ 501, 505, 511, 598 to 617; 73A C.J.S. Public Administrative Law and Procedure § 115 et seq.

50-1-3. [Powers and duties of director of the labor and industrial division.]

Said commissioner [director of the labor and industrial division] shall inform himself of all laws of the state for the protection of life and limb in any of the industries of the state, all laws regulating the hours of labor, the employment of minors, the payment of wages and all other laws enacted for the protection, health and benefit of employees, and thereunder foster, promote and develop the welfare of wage earners, advance opportunities for profitable employment; require, acquire and disseminate useful information on all subject [subjects] connected with labor, and assist in the enforcement of the workman's compensation laws and the employers' liability acts of the state. He shall have the power and authority, when in his judgment he deems it necessary, to take assignment of wage claims and prosecute actions for collection of wages or other claims or demands of employees or ex-employees, who are financially unable to employ counsel in cases in which in the judgment of the commissioner [director] such claims and demands are valid and enforceable in the courts. It shall be the duty of said labor commissioner to enforce all labor laws in the state of New Mexico, the enforcement of which is not specifically and exclusively vested in any other officer, board or commission, state or federal, and whenever after due inquiry, he shall be satisfied that any such law has been violated or that any employee or ex-employee financially unable to employ counsel, has a just, valid and enforceable claim for wages or other claims or demands, he shall present the facts to the district attorney of the county in which such violation occurred or wage claim accrued, and it shall be the duty of such district attorney to prosecute the same. Said labor commissioner shall also prosecute claims arising as between employment agencies and those seeking employment when in his judgment they are valid and enforceable in the courts.

History: Laws 1931, ch. 9, § 9; 1941 Comp., § 57-109; 1953 Comp., § 59-1-9.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

Bracketed material. — The bracketed material was inserted by the compiler for purposes of clarity and it is not part of the law.

Cross references. — For Public Works Minimum Wage Act, *see* 13-4-11 to 13-4-17 NMSA 1978.

For public employment offices, *see* 50-1-6, 50-8-1, 50-8-2, 51-1-33 NMSA 1978.

For occupations exempted from act, *see* 50-1-8 NMSA 1978.

for powers and duties respecting payment of wages, *see* 50-4-8 to 50-4-12, 50-4-26, 50-4-27 NMSA 1978.

For actions on assigned wage claims, *see* 50-4-11, 50-4-12 NMSA 1978.

For employment of minors, *see* 50-6-1 NMSA 1978 et seq.

For Workers' Compensation Act, *see* 52-1-1 NMSA 1978 et seq.

For accident reports filed with director, *see* 52-1-58 to 52-1-61 NMSA 1978.

For Occupational Disease Disablement Law, *see* 52-3-1 NMSA 1978 et seq.

For safety provisions for miners, *see* 69-8-1 NMSA 1978 et seq.

Appealability of wage claim determination. — A party who is involved in a wage claim determination by the labor commissioner (now director of the labor and industrial division) may not appeal that determination directly to the court of appeals. *Eastern Indem. Co. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Once the statutory provisions for enforcement of wage claims are invoked through proceedings in the district court (Section 50-4-8 NMSA 1978 and this section) claimants may appeal the district court's decision pursuant to Rule 3, N.M.R. App. P. (Civ.) (now

Rule 12-201). *Eastern Indem. Co. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Appeal authorized by 12-8-16 NMSA 1978 does not allow appeals from determinations of the labor commissioner (now director of the labor and industrial division), since the Administrative Procedures Act (Sections 12-8-1 to 12-8-25 NMSA 1978) applies only to agencies made subject to the act "by agency rule or regulation if permitted by law", or which is specifically placed by law under the act. *Eastern Indem. Co. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Implied authority to promulgate rules. — The fact that the legislature has empowered the labor commissioner (now director of the labor and industrial division) to prosecute claims between employment agencies and prospective employees creates the implied authority to promulgate rules and regulations for the orderly and efficient pursuance of this duty. 1968 Op. Att'y Gen. No. 68-96.

No authority to enforce laws concerning discrimination in employment. — With the creation of the human rights commission, the state labor and industrial commission (now division) has no duty or power to enforce any laws concerning discrimination in employment and, therefore, none of its general purpose appropriation can be used for that purpose. 1969 Op. Att'y Gen. No. 69-116.

No authority to make new law. — The language of 50-1-5, 50-1-7 NMSA 1978 and this section is aimed at enforcement of existing law rather than the making of new law by way of regulation. 1964 Op. Att'y Gen. No. 64-61.

Limited by statutory authority. — Neither the labor commissioner (now director of the labor and industrial division) nor commission (now labor and industrial division) have the statutory authority to prescribe rules and regulations involving industrial safety devices. 1964 Op. Att'y Gen. No. 64-61.

Prosecution of wage claims. — The manner of prosecuting wage claims referred to him by the labor commissioner (now director of the labor and industrial division) is left to the judgment of the district attorney. When costs must be paid, they should be paid by the claimant and taxed as costs against the losing party. 1931 Op. Att'y Gen. 31-225.

Intervention on wage claims. — Intervention permitted by 50-1-3 NMSA 1978 is with reference to wage claims and not personal injury claims under the Workmen's (Workers') Compensation Act. 1966 Op. Att'y Gen. No. 66-53.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 Am. Jur. 2d Labor and Labor Relations § 614 et seq.

Refusal of NLRB to file unfair labor practice complaint as subject to review in independent suit in federal district court, 69 A.L.R. Fed. 870.

Construction of provision of 29 USCS § 481(c) that unions and their officers shall "refrain from discrimination in favor of or against any candidate (for union office) with respect to use of lists of members", 113 A.L.R. Fed. 389.

Employer's duty to furnish particular information, other than financial or wage information, to employees' representative under National Labor Relations Act, 113 A.L.R. Fed. 425.

51 C.J.S. Labor Relations § 16; 51A C.J.S. Labor Relations §§ 506, 509, 517, 681; 30 C.J.S. Employer-Employee §§ 75, 76.

50-1-4. [Annual report of director of the labor and industrial division; contents.]

The commissioner [director of the labor and industrial division] shall collect, systematize and present in annual reports to the governor statistical details relating to his office and especially as bearing upon the commercial, social and sanitary conditions of the employees, the means of escape from dangers incident to their employment; the protection of life and health in factory or other places of employment; the labor of women and children and the hours of labor exacted from them and in general all matters which tend to affect the prosperity of the mechanical, manufacturing and productive industries of this state and of the persons employed therein.

History: Laws 1931, ch. 9, § 10; 1941 Comp., § 57-110; 1953 Comp., § 59-1-10.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

50-1-5. [Inspections by director of the labor and industrial division; penalty for obstructing; notice; offenses of director or agents; penalties.]

Said labor commissioner [director of the labor and industrial division] shall have the power to enter any store, factory, foundry, mill, office, workshop, mine or public or private works at any time during working hours and remain as long as necessary for the purpose of gathering facts and statistics contemplated by this act [50-1-1 to 50-1-8 NMSA 1978], and to examine safeguards and methods of protection from danger to employees, the sanitary conditions of the buildings and surroundings, and make a record thereof; and any owner, corporation, occupant or officer who shall refuse such entry to said labor commissioner [chief], his officers or agents, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars [($50.00)] nor more than five hundred dollars [($500)], or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment.

Provided, that said labor commissioner [director] or his agent or agents, shall, upon entering any store, factory, foundry, mill, office, workshop, mine or any other public or private works, notify the owner, manager, superintendent or anyone in charge of such place of labor, of his intention to make such visit of inspection, and such owner, manager, superintendent or party in charge, shall have the right, either by himself or agent, to accompany such commissioner [director], or his agent or agents, during the entire time he spends upon such premises.

And, provided, further, that it shall be unlawful for any such labor commissioner [director], his agent or agents, during the term of office to which such commissioner [director] shall have been appointed, to either directly or indirectly, verbally or by written or printed matter, advocate the organization, or changes in organization, or the attempt at disorganization of labor organization or labor unions, or to officially do any act either for or against any political party in the state of New Mexico. Any commissioner [director], or his agent or agents who fail to give such notice of such visit, or refuses such owner, manager, superintendent or party in charge, or his agent, the right to accompany him at all times on visits of inspection, provided for herein, or who participates in the organization, changing or disorganization of the labor union or labor association, contrary to the provisions hereof, or who officially does any act for or against any political party in the state of New Mexico, during his term of office, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined any sum not less than fifty dollars [($50.00)] nor more than five hundred dollars [($500)], or [punished] by imprisonment in the county jail of not less than ten days nor more than thirty days, or by both such fine and imprisonment.

History: Laws 1931, ch. 9, § 11; 1941 Comp., § 57-111; 1953 Comp., § 59-1-11.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

Aimed at enforcement. — The language of Sections 50-1-3, 50-1-7 NMSA 1978 and this section is aimed at enforcement of existing law rather than the making of new law by way of regulation. 1964 Op. Att'y Gen. No. 64-61.

50-1-6. [Free employment agency.]

The labor commissioner [director of the labor and industrial division] may, if deemed necessary, maintain and operate a free employment agency for the purpose of supplying labor to all branches of industry.

History: Laws 1931, ch. 9, § 12; 1941 Comp., § 57-112; 1953 Comp., § 59-1-12.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department."

Cross references. — For public employment agencies, *see* 50-8-1, 50-8-2 and 51-1-33 NMSA 1978.

50-1-7. Reporting violations of labor and industrial laws.

It is the duty of the director of the labor and industrial division of the labor department to report to the district attorney of the district in which such violations occur, any violation of labor and industrial laws of New Mexico, and it is the duty of the district attorneys of the several districts, upon the complaint of the director, to prosecute all violations of law which may be reported to the district attorney by the director.

History: Laws 1931, ch. 9, § 13; 1941 Comp., § 57-113; 1953 Comp., § 59-1-13; Laws 1977, ch. 252, § 27; 1989, ch. 49, § 1.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

The 1989 amendment, effective June 16, 1989, substituted "director of the labor and industrial division of the labor department" for "labor commissioner", deleted "except violations of the state child labor law, which shall be reported to the children and youth services bureau of the social services division of the human services department" following "New Mexico", and made minor stylistic changes.

Aimed at enforcement. — The language of Sections 50-1-3, 50-1-5 NMSA 1978 and this section is aimed at enforcement of existing law rather than the making of new law by way of regulation. 1964 Op. Att'y Gen. No. 64-61.

50-1-7.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 342, § 34 repealed 50-1-7.1 NMSA 1978, as enacted by Laws 1979, ch. 204, § 10, relating to report of operations and expenses of the labor commissioner's office, effective July 1, 1987.

50-1-8. [Occupations exempted from act.]

None of the provisions of this act [50-1-2 to 50-1-7, 50-1-8 NMSA 1978] shall apply to the industries of agriculture or stock raising, or to any labor employed in connection therewith, or to labor exclusively employed in domestic service.

History: Laws 1931, ch. 9, § 15; 1941 Comp., § 57-115; 1953 Comp., § 59-1-15.

ANNOTATIONS

Repeals. — Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, effective July 1, 2007.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who are "agricultural laborers" exempt from coverage of National Labor Relations Act § 2(3) (29 USCS § 152(3)), 130 A.L.R. Fed. 1

50-1-9. Repealed.

History: Laws 1987, ch. 333, § 2; 1993, ch. 83, § 1; 2000, ch. 4, § 4; 2005, ch. 208, § 2; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 50-1-9 NMSA 1978, as enacted by Laws 1987, ch. 333, § 2, effective July 1, 2007. Section 50-1-9 NMSA 1978 provided for the delayed repeal of the labor and industrial commission, effective July 1, 2014. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

ARTICLE 2
Corrupt and Coercive Practices

50-2-1. Findings and policies.

A. Findings. Hearings conducted by the McClellan committee of the United States senate, without reflecting upon the aims or integrity of the vast majority of employers and labor unions have disclosed collusive, coercive and corrupt practices indulged in by a small minority of irresponsible employers and leaders of labor unions.

These practices, which shock the conscience of our citizens and are deplored by all right thinking people, have been tolerated and encouraged by the absence of appropriate statutory prohibitions and declared governmental policy.

New Mexico, on the threshold of its greatest era of economic development, for the welfare and protection of its citizens, should by statute eliminate those practices which are so destructive to good employee-employer relationships, and which in many cases have been shown to have resulted in a denial of the civil liberties of many persons.

The legislature finds that the coercive and collusive practices prohibited herein represent a serious menace to the peace, safety, morals and welfare of the people of this state. The elimination of such practices by affording effective relief therefrom is a necessary condition to the realization of personal freedom for the employee, the encouragement of employee representation according to the free will of the employees and for their greater welfare, and the protection of the public interest generally.

B. Public Policy. An [In] interpretation and the application of this act [50-2-1 to 50-2-3 NMSA 1978], it is hereby declared to be the public policy of this state to mitigate and eliminate certain coercive and collusive practices of labor organizations and employers with the view of promoting and protecting the exercise by employees of the fullest possible freedom with respect to self-organization, choice of bargaining representative, collective bargaining and all other legitimate concerted activities, it being fully recognized by the legislature that employees should have an equal freedom to refrain from any such activity or activities except to the extent that such freedom may be limited by a valid agreement in writing requiring membership in a labor organization as a condition of employment.

History: 1953 Comp., § 59-13-1, enacted by Laws 1959, ch. 26, § 1.

ANNOTATIONS

Protection of right. — A mandamus proceeding against the governor to recognize a statutory or constitutional right of petitioners to organize and collectively bargain under this section or N.M. Const., art. II, §§ 4 and 18, does not meet the criteria for an exercise of original jurisdiction in mandamus by the supreme court. *State ex rel. AFSCME v. Johnson*, 1999-NMSC-031, 128 N.M. 481, 994 P.2d 727.

Inapplicable to public employer-employee relations. — State statutes regulating labor relations in private industry, such as this section, are not applicable to public employer-employee relations. 1963 Op. Att'y Gen. No. 63-52.

Acceptable collective bargaining agreement provisions. — Institutions of higher learning may enter into collective bargaining agreements which contain provisions for settlements of disputes by way of compulsory arbitration. 1974 Op. Att'y Gen. No. 74-03.

Institutions of higher learning may legally enter into collective bargaining agreements which provide for modified agency shop and dues check-off system. 1974 Op. Att'y Gen. No. 74-03.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 Am. Jur. 2d Labor and Labor Relations § 657 et seq.

Union security arrangements in state public employment, 95 A.L.R.3d 1102.

Modern status of rule that employer may discharge at-will employee for any reason, 12 A.L.R.4th 544, 32 A.L.R.4th 1221, 33 A.L.R.4th 120.

Procedural rights of union members in union disciplinary proceedings - modern state cases, 79 A.L.R.4th 941.

Effectiveness of employer's disclaimer of representations in personnel manual or employee handbook altering at-will employment relationship, 17 A.L.R.5th 1.

Effect of First Amendment on jurisdiction of national labor relations board over labor disputes involving employer operated by religious entity, 63 A.L.R. Fed. 831.

Prohibition or limitation on display of signs by employees as unfair labor practice, 86 A.L.R. Fed. 321.

Recording of collective bargaining or grievance proceeding as unfair labor practice, 86 A.L.R. Fed. 844.

When is subsequent business operation bound by existing collective bargaining agreement between labor union and predecessor employer, 88 A.L.R. Fed. 89.

Requirements for obtaining court approval of rejection of collective bargaining agreement by debtor in possession or trustee in bankruptcy under 11 USC § 1113(b) and (c), 89 A.L.R. Fed. 299.

Suits by union members against union officers under 29 USCS § 501(b), 114 A.L.R. Fed. 417.

Increase, or promise of increase, or withholding of increase, of wages as unfair labor practice under national labor relations act, 137 A.L.R. Fed. 333.

"Mass discharge" of employees as evidence of unfair labor practice under §§ 8 (a)(1) and (3) of National Labor Relations Act (29 USCS § 158 (a)(1), (3)), 137 A.L.R. Fed. 445.

Job placement of returning strikers as unfair labor practice under § 8(a) of National Labor Relations Act (29 USCA § 158(a)), 145 A.L.R. Fed. 619.

50-2-2. [Prohibited acts; picketing; coercion or intimidation; obstructing ways of entrance or egress; interfering with use of transportation facilities; damages from violation of law; injunction.]

A. It shall be unlawful for a labor organization or its representatives to engage in picketing or to induce others to engage in picketing where an object thereof is:

(1) coercing or inducing an employer or self-employed person to join or contribute to a labor organization; or

(2) coercing or inducing an employer to recognize or bargain with a labor organization as the representative of his employees unless a majority of said employees favor such representation, provided, that the provisions of this subsection shall not apply when a majority of employees favored such representation at the commencement of such picketing, and the employer has eliminated such majority by the discharge of any employee favoring such representation, or the hiring of any additional employees opposed to such representation for the purpose of availing himself of the remedies provided in this section.

B. It shall be unlawful in connection with any labor dispute for any person individually or in concert with others to hinder or prevent by mass picketing, violence or threats of violence, force, coercion or intimidation of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free or uninterrupted use of any public roads, streets, highways, railways, airports or other ways of travel or conveyance.

C. Whoever shall be injured in his employment, business or property by reason of any violation of this section shall recover the actual damages by him sustained as a result of said violation and such punitive or exemplary damages as the court or jury may allow.

D. Any person or persons may be restrained by injunction from doing any of the acts prohibited by this section without regard to the conditions and restrictions set forth in Sections 50-3-1 and 50-3-2 NMSA 1978.

History: 1953 Comp., § 59-13-2, enacted by Laws 1959, ch. 26, § 2.

ANNOTATIONS

"Person" to include labor organizations. — "Person" being inclusive, rather than exclusive, and its meaning including bodies of persons as well as individuals, union defendants are subject to this section as a labor organization is included within the word "person." *Gonzales v. Oil, Chem. & Atomic Workers Int'l Union*, 1966-NMSC-211, 77 N.M. 61, 419 P.2d 257.

Jurisdiction over claim of violence. — Claim of statutory violation based on violence or threats of violence is a claim over which the trial court has jurisdiction. *Gonzales v. Oil, Chem. & Atomic Workers Int'l Union*, 1966-NMSC-211, 77 N.M. 61, 419 P.2d 257.

Jurisdiction based on involved conduct. — The proposed distinction between a common law tort and a statutory violation is without merit. The conduct involved is the basis for jurisdiction. *Gonzales v. Oil, Chem. & Atomic Workers Int'l Union*, 1966-NMSC-211, 77 N.M. 61, 419 P.2d 257.

State jurisdiction generally. — Contention that the portion of this section relating to violence or threats of violence cannot be given effect by New Mexico courts because that portion is "arguably subject" to 29 U.S.C. §§ 157, 158, and therefore that the New Mexico courts have no jurisdiction because the section poses a potential conflict with federal statutes, is incorrect as state jurisdiction in these situations is not overridden in the absence of clearly expressed congressional direction. *Gonzales v. Oil, Chem. & Atomic Workers Int'l Union*, 1966-NMSC-211, 77 N.M. 61, 419 P.2d 257.

Federal labor law preemptive. — New Mexico courts cannot give effect to those portions of this section authorizing damages for peaceful activities in connection with a labor dispute where federal labor law is applicable as its jurisdiction over such activities is preempted by federal labor law. *Gonzales v. Oil, Chem. & Atomic Workers Int'l Union*, 1966-NMSC-211, 77 N.M. 61, 419 P.2d 257.

Access of customers may not be obstructed. — The provisions of Subsection B which prohibit the obstruction of the access of other employees to a place of employment also apply to the access of customers. *PTA Sales, Inc. v. Retail Clerks Local 462*, 1981-NMSC-089, 96 N.M. 581, 633 P.2d 689.

Injunction limiting area picketed and number of pickets authorized. — An injunction which limits the number of pickets allowed, confines the area in which they may present themselves, and keeps them out of any place in which they would impede, albeit peacefully, foot traffic and access to a place of business is within the subject matter jurisdiction of a court under Subsection D. *PTA Sales, Inc. v. Retail Clerks Local 462*, 1981-NMSC-089, 96 N.M. 581, 633 P.2d 689.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 Am. Jur. 2d Labor and Labor Relations § 700 et seq.

Validity of statute or ordinance against picketing, 35 A.L.R. 1200, 108 A.L.R. 1119, 122 A.L.R. 1043, 125 A.L.R. 963, 130 A.L.R. 1303.

Unfair labor practice, within National Labor Relations Act or similar state statute, predicated upon statements or acts by employees not expressly authorized by employer, 146 A.L.R. 1062.

Conduct of employees or labor union as unfair labor practice within labor relations acts, 149 A.L.R. 464.

State criminal prosecutions of union officer or member for specific physical threats to employer's property or person, in connection with labor dispute - modern cases, 43 A.L.R.4th 1141.

Settlement of unfair labor practice cases, 14 A.L.R. Fed. 25.

Union discipline for crossing picket line as unfair labor practice, 47 A.L.R. Fed. 669, 72 A.L.R. Fed. 330.

Collective bargaining agreement as restricting right to engage in concerted activities, other than striking or picketing, under § 7 of National Labor Relations Act (29 USCS § 157), 69 A.L.R. Fed. 812.

Refusal of NLRB to file unfair labor practice complaint as subject to review in independent suit in federal district court, 69 A.L.R. Fed. 870.

Existence and nature of employer's obligation to remedy unfair labor practices committed by predecessor - modern cases, 102 A.L.R. Fed. 575.

Damages for allegedly wrongful interference with employment rights as received "on account of personal injuries," so as to be excludible from income tax under 26 USCS § 104(a)(2), 106 A.L.R. Fed. 321.

Construction of freedom of speech and assembly provisions of § 101(a)(2) of Labor-Management Reporting and Disclosure Act of 1959 (29 USCS § 411(a)(2)), included in bill of rights of member of labor organizations, 143 A.L.R. Fed. 1

Preemption of state law wrongful discharge claim, not arising from whistleblowing, by § 541(a) of Employee Retirement Income Security Act of 1974 (29 U.S.C.A. § 1144(a)), 176 A.L.R. Fed. 433.

51A C.J.S. Labor Relations §§ 267, 341 to 348; 51B C.J.S. Labor Relations §§ 811 to 821, 1343.

50-2-3. [Gift to representative of labor organization to influence action; solicitation; acceptance; penalty.]

A. It shall be unlawful:

(1) for any person to give or offer to give any money, property or other thing of value to any representative of a labor organization, with the intent to influence him with respect to any of his acts, decisions or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person; or

(2) for any representative of a labor organization to solicit or accept or agree to accept from any person any money, property or other thing of value upon any

agreement or understanding, express or implied, that he shall be influenced with respect to any of his acts, or decisions or other duties as such representative, or upon any agreement or understanding, express or implied, that he shall refrain from causing or shall prevent a strike or work stoppage or picket line or any form of injury to any business.

B. Any person who violates any of the provisions of this section shall upon conviction thereof be guilty of a misdemeanor and be subject to a fine of not more than $500.00 or to imprisonment of not more than 30 days, or both.

History: 1953 Comp., § 59-13-3, enacted by Laws 1959, ch. 26, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51A C.J.S. Labor Relations §§ 336, 337; 51B C.J.S. Labor Relations § 1343.

50-2-4. Promise concerning union membership.

A. Every promise between any employee or prospective employee and his employer, prospective employer or any other person is contrary to public policy if either party thereto promises any of the following:

(1) not to join or not to remain a member of a labor organization or of an employer organization; or

(2) to withdraw from an employment relation in the event that he joins or remains a member of a labor organization or of an employer organization.

B. Such promise shall not afford any basis for the granting of legal or equitable relief by any court against a party to such promise, or against any other persons who, without fraud, violence or threat thereof, advise such party to act in disregard of such promise.

C. The term "promise" includes promise, undertaking, contract or agreement, whether written or oral, express or implied.

D. Any person who coerces or compels any person to enter into an agreement, written or verbal, not to join or become a member of any labor organization, as a condition of securing employment or continuing in the employment of any such person is guilty of a misdemeanor.

History: 1953 Comp., § 59-13-4, enacted by Laws 1967, ch. 241, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability, under statute, of labor union or its membership for torts committed in connection with primary labor activities - state cases, 85 A.L.R.4th 979.

ARTICLE 3
Injunction in Labor Disputes

50-3-1. [Restrictions on granting of injunctions.]

No court nor any judge or judges thereof within the state of New Mexico shall have jurisdiction to issue a permanent injunction or restraining order in any case involving or growing out of a labor dispute, within the state, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered and presented, and except after findings of all the following facts by the court or judge or judges thereof:

A. that unlawful acts have been threatened or committed and will be executed or continued unless restrained;

B. that substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

C. that complainant has no adequate remedy at law; and

Such hearing shall be held after due notice as may be ordered in the discretion of the court, and in such manner as the court shall direct, to all known persons against whom relief is sought.

History: Laws 1939, ch. 195, § 1; 1941 Comp., § 57-201; 1953 Comp., § 59-2-1.

ANNOTATIONS

"Labor dispute" generally. — No precise or particularized definition of term "labor dispute" is practicable, but in analyzing the facts of each controversy, fact finder must determine that a real and sincere dispute exists bearing some relation to the employer and concerning some aspect of employment in his enterprise and then, before injunctive relief may yet be denied, he must determine that the collective bargaining activities are in furtherance of some legitimate interest of labor and not in contravention of public policy of the state. *Pomonis v. Hotel, Rest. & Bartenders' Local 716,* 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

Scope of "labor disputes". — Judicial determination which confines the meaning of "labor dispute" to direct controversies between employer and employee is inconsistent

with the guarantee of freedom of speech. *Pomonis v. Hotel, Rest. & Bartenders' Local 716*, 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

Labor dispute embraces organizational disputes. — Labor disputes are not necessarily limited to disputes between employer and employees, but the term embraces organizational disputes as well. *Romero v. Journeyman Barbers Local 501*, 1958-NMSC-007, 63 N.M. 443, 321 P.2d 628.

Authorization for strike and collective bargaining. — Authorization from majority of employees is not necessarily required before a strike or picketing may be lawfully commenced and although some employees subsequently repudiate their authorizations, these acts cannot retroactively destroy the relationship existing between them and the union at the time collective bargaining began. *Pomonis v. Hotel, Rest. & Bartenders' Local 716*, 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

When picketing not protected. — Picketing in an unlawful manner, or for an unlawful objective, is not constitutionally protected, even though there may exist at the moment a labor dispute. *Romero v. Journeymen Barbers Local 501*, 1958-NMSC-007, 63 N.M. 443, 321 P.2d 628.

Unlawful conduct generally. — While court cannot condone isolated instances of violence on the part of pickets in labor dispute, where employers likewise did not conduct themselves at all times in a peaceful manner, the latter cannot in equity complain of these acts. *Pomonis v. Hotel, Rest. & Bartenders' Local 716*, 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

Section not applicable to public employee strikes. — This section does not apply to strikes and work stoppages by public employees in the absence of an express statutory provision. *City of Albuquerque v. Campos*, 1974-NMSC-065, 86 N.M. 488, 525 P.2d 848.

Unlawful strikes. — Teachers and employees of a local public school system may not lawfully strike against the local school board in the absence of express legislative authority to so strike. 1964 Op. Att'y Gen. No. 64-47.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 3631 et seq.

Lawfulness of strike to compel collective bargaining, 20 A.L.R. 1513.

Right of state or United States to maintain suit to enjoin strike or acts in furtherance thereof, 25 A.L.R. 1245.

Validity and effect of statutes restricting remedy by injunction in industrial disputes, 27 A.L.R. 411, 35 A.L.R. 460, 97 A.L.R. 1333, 106 A.L.R. 361, 120 A.L.R. 316, 124 A.L.R. 751, 127 A.L.R. 868.

Injunction against strike as violating constitutional provision against involuntary servitude, 46 A.L.R. 1541.

Sufficiency of complaint in action to enjoin breach of collective bargaining agreement, 156 A.L.R. 652.

Employer's right to injunction against picketing by labor union to enforce a demand, compliance with which would constitute an unfair labor practice, 162 A.L.R. 1438.

Legality of, and injunction against, peaceable picketing by labor union, of plant whose employees are represented by another union as statutory bargaining agent, 166 A.L.R. 185.

Lawfulness or purpose of peaceable picketing as affecting right to injunction, 174 A.L.R. 593.

Relief against union activities as affected by fact owner operates own business or does part of own work, 2 A.L.R.2d 1196, 13 A.L.R.2d 642.

Injunction against peaceful picketing as affected by employer's lack of opportunity to negotiate with union or employees, 11 A.L.R.2d 1069.

Injunction against peaceful picketing to force employees to join union or to compel employer to enter into a contract which would in effect compel them to do so, in the absence of a dispute between employer and employees as to terms or conditions of employment, 11 A.L.R.2d 1338.

Mandatory injunction prior to hearing of case, 15 A.L.R.2d 213.

Right of third party in area picketed during labor dispute, who has no connection with the dispute, to an injunction against such picketing, 15 A.L.R.2d 1396.

Nonprofit charitable institutions as within operation of labor statutes, 26 A.L.R.2d 1020.

Applicability of Norris-LaGuardia Act and similar state statutes to injunction action by private complainant, 29 A.L.R.2d 323.

State court's power to enjoin picketing as affected by Labor Management Relations Act, 32 A.L.R.2d 1026.

Injunction against picketing, by employees of a plant where labor dispute exists, at another plant of employer where there is no labor dispute, 37 A.L.R.2d 687.

Rights and remedies of workmen blacklisted by labor union, 46 A.L.R.2d 1124.

Legality of peaceful labor picketing on private property, 10 A.L.R.3d 846.

Peaceful picketing of private residence, 42 A.L.R.3d 1353.

Pre-emption, by § 301(a) of Labor-Management Relations Act of 1947 (29 USCS § 185(a)), of employee's state-law action for infliction of emotional distress, 101 A.L.R. Fed. 395.

51B C.J.S. Labor Relations § 781 et seq.

50-3-2. [Temporary restraining order; when issued; security for loss.]

If a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, such temporary restraining order may be granted as the court may direct by order to show cause.

Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and the restraining order shall issue only upon testimony, or in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as herein provided for.

No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security, to be fixed by the court, sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs and expenses against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

History: Laws 1939, ch. 195, § 2; 1941 Comp., § 57-202; 1953 Comp., § 59-2-2.

ANNOTATIONS

"Labor dispute" generally. — No precise or particularized definition of term "labor dispute" is practicable, but in analyzing the facts of each controversy, fact finder must determine that a real and sincere dispute exists bearing some relation to the employer and concerning some aspect of employment in his enterprise and then, before injunctive relief may yet be denied, he must determine that the collective bargaining activities are in furtherance of some legitimate interest of labor and not in contravention of the public policy of state. *Pomonis v. Hotel, Rest. & Bartenders' Local 716*, 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

Scope of "labor dispute". — Judicial determination which confines the meaning of "labor dispute" to direct controversies between employer and employee is inconsistent

with the guarantee of freedom of speech. *Pomonis v. Hotel, Rest. & Bartenders' Local 716*, 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

Authorization for strike and collective bargaining. — Authorization from majority of employees is not necessarily required before a strike or picketing may be lawfully commenced and although some employees subsequently repudiate their authorizations, these acts cannot retroactively destroy the relationship existing between them and the Union at the time collective bargaining began. *Pomonis v. Hotel, Rest. & Bartenders' Local 716*, 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

Unlawful conduct generally. — While court cannot condone isolated instances of violence on the part of pickets in labor dispute, where employers likewise did not conduct themselves at all times in a peaceful manner, the latter cannot in equity complain of these acts. *Pomonis v. Hotel, Rest. & Bartenders' Local 716*, 1952-NMSC-010, 56 N.M. 56, 239 P.2d 1003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 3661 et seq.

51B C.J.S. Labor Relations §§ 911 to 968.

ARTICLE 4
Labor Conditions; Payment of Wages

50-4-1. Definitions.

Whenever used in Sections 50-4-1 through 50-4-12 NMSA 1978:

A. "employer" includes every person, firm, partnership, association, corporation, receiver or other officer of the court of this state and any agent or officer of any of the above-mentioned classes employing any person in this state, except employers of livestock and agricultural labor; and

B. "wages" means all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece or commission basis or other method of calculating such amount.

History: Laws 1937, ch. 109, § 1; 1941 Comp., § 57-301; 1953 Comp., § 59-3-1; 2019, ch. 242, § 1.

ANNOTATIONS

Cross references. — For employees to be given time to vote, *see* 1-12-42 NMSA 1978.

For coercing employees in election matters, *see* 1-20-13 NMSA 1978.

For minimum wages on public works contracts, *see* 13-4-11 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the definition of "employer" as used in Sections 50-4-1 through 50-4-12 NMSA 1978, and removed the exception of domestic service from wage protections; in the introductory clause, after "used in", deleted "this act" and added "Sections 50-4-1 through 50-4-12 NMSA 1978"; and in Subsection A, after "except", deleted "employers of domestic labor in private homes and".

Municipalities included within definition of "employer". — Municipalities are required to comply with the payment mandates of 50-4-2(A) NMSA 1978 when 50-4-1(A) NMSA 1978 does not specifically exclude municipalities from the definition of "employer." *Rainaldi v. City of Albuquerque*, 2014-NMCA-112.

Availability of federal remedy. — Employees are not prevented from suing under the New Mexico Minimum Wage Act merely because suit is also available under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185. *Cruse v. St. Vincent Hosp.*, 729 F. Supp. 2d 1269 (D.N.M. 2010).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27 Am. Jur. 2d Employment Relationship § 52.

Servant's right to compensation for extra work or overtime, 25 A.L.R. 218, 107 A.L.R. 705.

Necessity in indictment charging violation of statute regarding wages, or hours, of naming particular employees, 81 A.L.R. 76.

Waiver or loss of statutory right to minimum wage or benefit of regulation as to hours of labor, 102 A.L.R. 842, 129 A.L.R. 1145.

Fair Labor Standards Act as affecting validity of wage agreements respecting compensation for overtime, 169 A.L.R. 1326.

Payment in excess of wages then due as offsetting underpayment for overtime, 6 A.L.R.2d 95.

Right to overtime pay under Portal-to-Portal Act as affected by contract or custom, 21 A.L.R.2d 1327, 26 A.L.R. Fed. 607.

Nonprofit charitable institutions as within operation of labor statutes, 26 A.L.R.2d 1020.

Tips as wages, 65 A.L.R.2d 974.

Sufficiency of notice of modification in terms of compensation of at-will employee who continues performance to bind employee, 69 A.L.R.4th 1145.

Employee's protection under § 15(a)(3) of Fair Labor Standards Act (29 USCS § 215(a)(3)), 101 A.L.R. Fed. 220.

30 C.J.S. Master and Servant § 132 et seq.

50-4-2. Semimonthly and monthly pay days.

A. An employer in this state shall designate regular pay days, not more than sixteen days apart, as days fixed for the payment of wages to all employees paid in this state. The employer shall pay for services rendered from the first to the fifteenth days, inclusive, of any calendar month by the twenty-fifth day of the month during which services are rendered, and for all services rendered from the sixteenth to the last day of the month, inclusive, of any calendar month by the tenth day of the succeeding month. Where computation of earnings and of amounts due, preparation of payrolls and issuance of paychecks are at a central location outside New Mexico, the employer shall pay for services rendered from the first to the fifteenth days, inclusive, of any calendar month by the last of the month during which services are rendered, and for all services rendered from the sixteenth to the last day of the month, inclusive, of any calendar month by the fifteenth day of the succeeding month.

B. Except as provided by rules of the department of finance and administration for payment of salaries and wages to state employees, other than employees of institutions of higher education, promulgated pursuant to Section 10-7-2 NMSA 1978, an employer shall pay wages in full, less lawful deductions and less payroll deductions authorized by the employer and employee. Wages shall be paid in lawful money of the United States or in checks, payroll vouchers or drafts on banks, convertible into cash on demand at full face value or, with the voluntary authorization of the employer, employee and financial institution, by deposit to the account of the employee in any bank, savings and loan association, credit union or other financial institution authorized by the United States or one of the several states to receive deposits in the United States, without any reduction or deduction, except as may be specifically stated in a written contract of hiring entered into at the time of hiring. An employer shall provide an employee with a written receipt that identifies the employer and sets forth the employee's gross pay, the number of hours worked by the employee, the total wages and benefits earned by the employee and an itemized listing of all deductions withheld from the employee's gross pay. Nothing contained in Sections 50-4-1 through 50-4-12 NMSA 1978 shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals than those set forth in this section. Where the labor or service to be rendered to an employer is recompensed on a task, piece or commission basis or other method of calculating the amount of wages to be paid, other than a definite and fixed amount in cash, the employer and the employee may agree in writing at the time of hiring that the wages shall be paid on a monthly basis, on or before the tenth day of the succeeding calendar month.

C. Notwithstanding the provisions of Subsection A of this section, an employer may pay professional, administrative or executive employees or employees employed in the capacity of outside salesman, as those terms are defined under the federal Fair Labor Standards Act, one time per month, excluding those employees whose wages are subject to provisions of collective bargaining agreements.

History: Laws 1937, ch. 109, § 2; 1941 Comp., § 57-302; Laws 1949, ch. 117, § 1; 1953 Comp., § 59-3-2; Laws 1975, ch. 223, § 1; 1991, ch. 95, § 1; 1993, ch. 26, § 1; 2005, ch. 93, § 2.

ANNOTATIONS

Cross references. — For state employees' salaries payable at least semimonthly, *see* 10-7-2 NMSA 1978.

For pay period for certified school personnel, *see* 22-10-7 NMSA 1978.

For pay period for water masters and assistants, *see* 72-3-4 NMSA 1978.

For the federal Fair Labor Standards Act referred to in Subsection C, *see* 29 U.S.C. § 201 et seq.

The 2005 amendment, effective June 17, 2005, provides in Subsection B that except as provided by rules of the department of finance and administration for payment of salaries and wages to state employees, other than employees of institutions of higher education, employers shall pay wages in full, less authorized deductions.

The 1993 amendment, effective July 1, 1993, inserted the second sentence of Subsection B.

The 1991 amendment added Subsection C.

Pay intervals not more than 30 (now 16) days. — This section requires employers to pay employees at intervals of not more than 30 (now 16) days. *Advance Loan Co. v. Kovach*, 1968-NMSC-154, 79 N.M. 509, 445 P.2d 386.

Municipalities not equal to the state for purposes of payment of wages. — Although a municipality may be an auxiliary of the state government, this relationship does not equate municipalities with the state for purposes of benefits and privileges, and therefore the express exclusion of the state in its capacity as an employer from 50-4-2(A) NMSA 1978 does not also exempt municipalities from complying with this section. *Rainaldi v. City of Albuquerque*, 2014-NMCA-112.

Municipal employers. — Municipalities, as political subdivisions of the state, are not "employers" as defined by the Minimum Wage Act and are therefore exempt from the overtime compensation requirements of the Minimum Wage Act, but when a

municipality elects to provide overtime compensation, it must comply with the overtime compensation schedule set forth in this section. *Rainaldi v. City of Albuquerque*, 2014-NMCA-112.

Overtime wages. — Where the city of Albuquerque delayed compensation of accrued overtime to police officers who received overtime pay accrued during the first week of the particular pay period combined with overtime pay accrued during the second week of the preceding pay period, the city's overtime compensation schedule did not comply with this section, which requires that employees be paid within ten days for all services rendered during the particular pay period. *Rainaldi v. City of Albuquerque*, 2014-NMCA-112.

"Banking" of hours violates this section. — Employer's policy of "banking" hours in excess of forty per week and deferring compensation for these hours for a period of up to one year conflicts with the Federal Labor Standards Act and this section, which prohibits employers from withholding compensation for such a lengthy period of time. *N.M. Dep't of Labor v. A.C. Elec., Inc.*, 1998-NMCA-141, 125 N.M. 779, 965 P.2d 363.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4196 et seq.

Constitutionality of statute regulating the time of payment of wages, 12 A.L.R. 635, 26 A.L.R. 1396.

30 C.J.S. Master and Servant §§ 177, 178.

50-4-3. Joint adventurers.

None of the provisions of this act [50-4-1 to 50-4-12 NMSA 1978] shall apply to cases where an agreement is entered into between the employer and the employee at the time of hiring, providing that the employee, as part of his wages or compensation, shall have an interest in the success of the particular work or enterprise in connection with which the employee is hired. In all such cases the employer shall be subject to the provisions of this act only to the extent of that portion of the wages or compensation to be paid in cash, and as to the balance the employer and employee shall stand as joint adventurers.

History: Laws 1937, ch. 109, § 3; 1941 Comp., § 57-303; 1953 Comp., § 59-3-3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 46 Am. Jur. 2d Joint Ventures §§ 25, 57.

48A C.J.S. Joint Ventures § 1 et seq.

50-4-4. Discharges [Discharged] employees.

A. Whenever an employer discharges an employee, the unpaid wages or compensation of such employee, if a fixed and definite amount, and not based on a task, piece, commission basis or other method of calculation, shall, upon demand become due immediately, and the employer shall pay such wages to the employee within five days of such discharge.

B. In all other cases of discharged employees the settlement and payment of wages or compensation shall be made within ten days of such discharge.

C. In case of failure to pay wages or compensation due an employee within the time hereinbefore fixed, the wages and compensation of the employee shall continue from the date of discharge until paid at the same rate the employee received at the time of discharge, and may be recovered in a civil action brought by the employee; provided that the employee shall not be entitled to recover any wages or compensation for any period subsequent to the date of discharge unless he pleads in his complaint and establishes that he made demand within a reasonable time upon his employer at the place designated for payment and payment was refused, provided further that the employee shall not be entitled to recover any wages or compensation for any period subsequent to the sixtieth day after the date of discharge.

History: Laws 1937, ch. 109, § 4; 1941 Comp., § 57-304; 1953 Comp., § 59-3-4; Laws 1975, ch. 23, § 1.

ANNOTATIONS

Purpose of statutes of limitation. — Statutes of limitation are not only enacted to do away with stale claims, but also to encourage an employee seeking the benefits of the statute to act promptly. *Spikes v. Mittry Constr. Co.*, 295 F.2d 207 (10th Cir. 1961).

Wages and commissions separate. — Upon timely payment of fixed and definite wages or compensation employer has no further obligation to employee in relation thereto under this section. However additional commissions not fixed and definite and not paid within 10 days continue to be payable until paid or tender thereof is made by employer. *Litteral v. Singer Bus. Machs. Co.*, 1975-NMSC-015, 87 N.M. 365, 533 P.2d 754.

Scope of section. — In an action to exact a penalty from an employer for failure to pay wages, the time limitations of this section control over 37-1-3 NMSA 1978. *Spikes v. Mittry Constr. Co.*, 295 F.2d 207 (10th Cir. 1961).

Failure to comply with statutory conditions. — An employer failed to comply with statutory conditions since it did not pay the amount conceded to be due employees within the times required by this section and since it could not show that it gave written notice of the amount conceded to be due as required by Section 50-4-7 NMSA 1978;

giving a payroll check to employees for undisputed wages did not satisfy the latter requirement. *Wolf v. Sam's Town Furniture Co.*, 1995-NMCA-114, 120 N.M. 603, 904 P.2d 52.

Accrued vacation pay was a fixed and definite amount, and the nonpayment of vacation time invoked the penalty of continued payment of both vacation time and wages for a maximum period of sixty days. *Wolf v. Sam's Town Furniture Co.*, 1995-NMCA-114, 120 N.M. 603, 904 P.2d 52.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4278.

Construction and application of provision of contract for compensation of employee upon dismissal or discharge, 147 A.L.R. 151, 40 A.L.R.2d 1044.

Estoppel to rely on statute of limitations, 24 A.L.R.2d 1413.

Right to discharge allegedly "at-will" employee as affected by employer's promulgation of employment policies as to discharge, 33 A.L.R.4th 120.

Damages recoverable for wrongful discharge of at-will employee, 44 A.L.R.4th 1131.

Validity, construction, and effect of state laws requiring payment of wages on resignation of employee immediately or within specified period, 11 A.L.R.5th 715.

Effectiveness of employer's disclaimer of representations in personnel manual or employee handbook altering at-will employment relationship, 17 A.L.R.5th 1.

Validity, construction, and effect of state laws requiring payment of wages on discharge of employee immediately or within specified period, 18 A.L.R.5th 577.

When statute of limitations commences to run as to cause of action for wrongful discharge, 19 A.L.R.5th 439.

Liability for breach of employment severance agreement, 27 A.L.R.5th 1.

Negligent discharge of employee, 53 A.L.R.5th 219.

Common law retaliatory discharge of employee for refusing to perform or participate in unlawful or wrongful acts, 104 A.L.R.5th 1.

Common law retaliatory discharge of employee for disclosing unlawful acts or other misconduct of employer or fellow employees, 105 A.L.R.5th 351.

30 C.J.S. Master and Servant §§ 133 to 135.

50-4-5. Employees quitting employment.

Whenever an employee (not having a written contract for a definite period) quits or resigns his employment, the wages or compensation shall become due and be payable at the next succeeding payday. Nothing in this section shall prohibit or restrict the right of the employer to make immediate payment at the time of quitting.

History: Laws 1937, ch. 109, § 5; 1941 Comp., § 57-305; 1953 Comp., § 59-3-5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4278.

Validity, construction, and effect of state laws requiring payment of wages on resignation of employee immediately or within specified period, 11 A.L.R.5th 715.

50-4-6. Industrial disputes.

In the event of the suspension of work as the result of an industrial dispute, the wages and compensation earned and unpaid at the time of such suspension shall become due and payable at the next payday as provided in Section 2 [50-4-2 NMSA 1978] of this act, including, without abatement or reduction, other than such deductions as may be required by law, or as may be specified in the contract of hiring, all amounts due to all persons whose work has been suspended as a result of such industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employee.

History: Laws 1937, ch. 109, § 6; 1941 Comp., § 57-306; 1953 Comp., § 59-3-6.

ANNOTATIONS

Accrued leave and vacation pay included. — The words "wages and compensation earned and unpaid" include accrued leave and vacation pay. 1962 Op. Att'y Gen. No. 62-69.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Reexhaustion of arbitration procedure as appropriate course for resolving backpay issues arising as a result of resolution of grievance, 59 A.L.R. Fed. 501.

50-4-7. Unconditional payment of wages conceded to be due.

In case of dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due, and shall pay such amount, without condition, within the times fixed by this act [50-4-1 to 50-4-12 NMSA 1978]. The acceptance by the employee of any payment so made, shall not constitute a

release as to the balance of his claim. The provisions of Section 4 [50-4-4 NMSA 1978] shall not be applicable in cases arising under this section, except as herein provided.

History: Laws 1937, ch. 109, § 7; 1941 Comp., § 57-307; 1953 Comp., § 59-3-7.

ANNOTATIONS

Failure to comply with statutory conditions. — An employer failed to comply with statutory conditions since it did not pay the amount conceded to be due employees within the times required by Section 50-4-4 NMSA and since it could not show that it gave written notice of the amount conceded to be due as required by this section; giving a payroll check to the employees for undisputed wages did not satisfy the latter requirement. *Wolf v. Sam's Town Furniture Co.*, 1995-NMCA-114, 120 N.M. 603, 904 P.2d 52.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4196 et seq.

Validity, construction, and effect of state laws requiring payment of wages on discharge of employee immediately or within specified period, 18 A.L.R.5th 577.

Reexhaustion of arbitration procedure as appropriate course for resolving backpay issues arising as a result of resolution of grievance, 59 A.L.R. Fed. 501.

50-4-8. Duties of the labor commissioner [director]

A. It is the duty of the labor commissioner [director] to investigate any violations of Sections 50-4-1 through 50-4-12 NMSA 1978 and to institute or cause to be instituted actions for the enforcement of the same. The labor commissioner [director] may hold hearings to satisfy himself as to the justice of any claim, and he shall cooperate with any employee in the enforcement of any claim against his employer whenever, in the opinion of the labor commissioner [director], the claim is just and valid.

B. It is the duty of all district attorneys to prosecute all cases, both civilly and criminally, which are referred to them by the labor commissioner.

C. It shall not be a defense to any action brought pursuant to this section that the plaintiff or complainant is an undocumented worker. It is not intended by this section to create any right to collect unemployment compensation nor to mandate any wage rate.

History: Laws 1937, ch. 109, § 8; 1941 Comp., § 57-308; 1953 Comp., § 59-3-8; Laws 1983, ch. 157, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

Appealability of wage claim determination. — A party who is involved in a wage claim determination by the labor commissioner (now director of the labor and industrial division) may not appeal that determination directly to the court of appeals. *E. Indem. Co. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Once the statutory provisions for enforcement of wage claims are invoked through proceedings in the district court (this section and Section 50-1-3 NMSA 1978) claimants may appeal the district court's decision pursuant to Rule 3, N.M.R. App. P. (Civ.) (now Rule 12-201 NMRA). *E. Indem. Co. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Appeal authorized by 12-8-16 NMSA 1978 does not allow appeals from determinations of the labor commissioner (now director of the labor and industrial division), since the Administrative Procedures Act (Sections 12-8-1 to 12-8-25 NMSA 1978) applies only to agencies made subject to the act "by agency rule or regulation if permitted by law", or which is specifically placed by law under the act. *E. Indem. Co. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4188 et seq.

51 C.J.S. Labor and Labor Relations § 16.

50-4-9. Records, subpoenas, etc.

A. Every employer shall keep a true and accurate record of hours worked and wages paid to each employee. The employer shall keep such records on file for at least one year after the entry of the record.

B. The labor commissioner [director of the labor and industrial division] and his authorized representatives shall have the right at all reasonable times to inspect such records for the purpose of ascertaining whether the provisions of this act [50-4-1 to 50-4-12 NMSA 1978] are complied with.

C. Any interference with the labor commissioner [director] or his authorized representatives in the performance of their duties shall be deemed a violation of this act and punished as such.

D. The labor commissioner [director] and his authorized representatives shall have the power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of payroll records and take depositions and affidavits in any proceedings before said labor commissioner [director].

E. In case of failure of any person to comply with any subpoena lawfully issued, or upon the refusal of any witness or witnesses to testify upon any matter which he or they may be lawfully interrogated, the labor commissioner [director] may apply to the district court in the proper county, or to the judge thereof, for a writ of attachment to compel said witness to respond to said subpoena or to testify as the case may be.

History: Laws 1937, ch. 109, § 9; 1941 Comp., § 57-309; 1953 Comp., § 59-3-9.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler and it is not part of the law.

Meaning of labor commissioner. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

"Best evidence" purpose. — This section does not operate as a statute of limitations, and the employer's records are the "best evidence" in establishing whether a violation exists under the act and they should be produced, if available. 1957 Op. Att'y Gen. No. 57-74.

Time limitations for demanding records. — The time limitation placed upon a representative of the labor commission (now division), or a district attorney acting on his request, in demanding the records of an employer to determine whether a violation exists under the New Mexico wage and hour laws is two years, if the purpose for demanding the records is to charge the employer in a criminal case; and four years, if the purpose is for bringing a civil action under the act against the employer. 1957 Op. Att'y Gen. No. 57-74.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 122 et seq.; 48A Am. Jur. 2d Labor and Labor Relations § 4436 et seq.

51A C.J.S. Labor Relations §§ 598 to 617.

50-4-10. Forfeiture and penalties.

A. An employer who violates or fails to comply with any provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and upon conviction for a first offense shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

B. A person who is convicted of a second or subsequent offense of violating or failing to comply with any provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 and shall be fined no less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000) for each offense for which the person is convicted, which fine shall not be suspended, deferred or taken under advisement.

C. Each occurrence of a violation for which a person is convicted is a separate offense. Multiple violations arising from transactions with the same person or multiple violations arising from transactions with different people shall be considered separate occurrences.

D. In case the employer is a corporation, the fine provided in this section shall be assessed against the corporation as a penalty.

History: Laws 1937, ch. 109, § 11; 1941 Comp., § 57-311; 1953 Comp., § 59-3-11; 2005, ch. 257, § 8.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, provided in Subsection A that a person who violates or fails to comply with Sections 50-4-1 through 50-4-12 NMSA 1978 for a first offense shall be sentenced pursuant to Section 31-19-1 NMSA 1978; deleted the former provision, which specified the punishment for a violation of the act to be a fine of between $25 and $50 for each separate offense or imprisonment of between ten days and ninety days, or both; added Subsection B to provide the punishment of a second or subsequent offense of the act; and added Subsection C to provide that each violation is a separate offense and that multiple violations shall be considered separate occurrences.

50-4-11. [Wage claims and liens to secure claims; assignment to director of the labor and industrial division for collection.]

The labor commissioner [director of the labor and industrial division] shall have power and authority to take assignments of wage claims, of employees against employers, and shall also have power to take assignments of liens upon real or personal property securing the claims of employees and laborers, and shall have power and authority to prosecute actions for the collection of such claims and for the

foreclosure of liens of such persons securing such claims of persons, who, in the judgment of the labor commissioner [director], are entitled to the services of the labor commissioner [director], and who, in his judgment, have claims or liens or both which are valid and enforceable in the courts. In cases where the commissioner [director] has taken assignments of labor claims which are lienable under the lien laws of the state of New Mexico he shall have power to join any number of claimants in one statement of claim or lien, and in case of suit to join any number of claimants in one cause of action.

History: Laws 1937, ch. 109, § 12; 1941 Comp., § 57-312; Laws 1945, ch. 48, § 1; 1953 Comp., § 59-3-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

Cross references. — For actions by employees under Minimum Wage Act, *see* 50-4-26 NMSA 1978.

For acknowledgements for wage and salary assignments, *see* 14-13-11 NMSA 1978.

For joinder of claims, *see* Rule 1-018 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4494.

Assignability of statutory claim against employer for nonpayment, 48 A.L.R.2d 1385.

50-4-12. Wage claim actions; costs; jurisdiction; representation by district attorney; appeals.

A. In all actions brought by the director of the labor and industrial division of the labor department as assignee under the provisions of Section 50-4-11 NMSA 1978, the director shall be entitled to free process and shall not be obligated or required to give any bond or other security for costs.

B. Any sheriff, constable or other officer requested by the director to serve any summons, writ, complaint or order shall do so without requiring the director to pay any fees or furnish any security or bond.

C. Where all claims joined together do not exceed in the aggregate the jurisdictional limit of the magistrate or metropolitan court, the director may institute an action against the employer in any magistrate or metropolitan court having jurisdiction without referring the claim to the district attorney. In the event that during the course of the proceedings representation by an attorney at law becomes necessary or, in the director's judgment, advisable, the director shall so notify the district attorney, and it shall then be the duty of the district attorney or the district attorney's assistant to appear for the director in the cause.

D. In the event the cause is appealed by the director, no bond or other security shall be required or fees charged the director for court costs or sheriff's fees in serving process.

History: Laws 1937, ch. 109, § 13; 1941 Comp., § 57-313; Laws 1945, ch. 48, § 2; 1953 Comp., § 59-3-13; Laws 1996, ch. 38, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

Cross references. — For jurisdictional limits of metropolitan court, *see* 34-8A-3 NMSA 1978.

For jurisdictional limits of magistrate court, *see* 35-3-3 NMSA 1978.

The 1996 amendment, effective May 15, 1996, amended Subsection C to increase the jurisdiction of the magistrate and metropolitan courts from $200 to the jurisdictional limits of those courts and amended the titles of officials and entities to reflect current law throughout the section.

Meaning of "bond". — Under Subsection A of this section, the word "bond" relates only to the costs of a proceeding and relieves labor commissioner (now director of the labor and industrial division) from giving a cost bond under the provisions of 39-2-14 NMSA 1978, and the word "bond" in Subsection B refers only to guaranteeing the fees

of the sheriff or other officer. *Cal-M, Inc. v. McManus*, 1963-NMSC-184, 73 N.M. 91, 385 P.2d 954.

No waiver of bond in attachment proceeding. — Section 50-4-11 NMSA 1978 and this section relating to wage-claim actions by the labor commissioner (now director of the labor and industrial division) do not waive the requirement for the furnishing of a bond in an attachment proceeding under Sections 42-9-4 and 42-9-7 NMSA 1978. *Cal-M, Inc. v. McManus*, 1963-NMSC-184, 73 N.M. 91, 385 P.2d 954.

50-4-13. [Hours of employment; eating establishments.]

Any person or persons, firm, association or corporation, owning any hotel, restaurant, cafe or eating house within this state, shall not be allowed to cause any male employee therein to labor more than ten hours in any twenty-four hours of any one day, nor more than seventy hours in any one week of seven days.

The hours of labor may be so arraigned [arranged] so as to permit the employment of any male employee so engaged at any time so that they shall not work more than ten hours in any twenty-four hours of any one day, nor more than seventy hours in any one week of seven days.

History: Laws 1933, ch. 149, § 3; 1941 Comp., § 57-314; 1953 Comp., § 59-3-14.

ANNOTATIONS

Cross references. — For maximum hours for females, *see* 50-5-1 NMSA 1978 et seq.

For maximum hours for children under fourteen, *see* 50-6-3 NMSA 1978.

For equal rights amendment, *see* N.M. Const., art. II, § 18.

Bracketed material. — The bracketed material in the section was inserted by the compiler. It was not enacted by the legislature, and it is not a part of the law.

Constitutionality of former sections. — The first two sections of this act (Laws 1933, ch. 149, §§ 1, 2), relating to employment of males for not more than eight of 24 hours and for not more than 48 hours of a six day week, were declared unconstitutional in *State v. Henry*, 1933-NMSC-080, 37 N.M. 536, 25 P.2d 204. Prior compilers retained Laws 1933, ch. 149, §§ 3 to 8, in spite of the holding that Laws 1933, ch. 149, §§ 1 and 2, are unconstitutional, since there has been a shift of opinion in this country on the question whether such statutes violate the freedom to contract guaranteed by the due process clause; Laws 1933, ch. 149, §§ 3 to 8, are compiled as Sections 50-4-13 to 50-4-18 NMSA 1978).

This section applies to any and all employees of a hotel, including bellboys, desk clerks, chamber maids, etc. 1953 Op. Att'y Gen. No. 53-5704.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4422.

Necessity in indictment charging violation of statute regarding wages or hours of labor of naming particular employees, 81 A.L.R. 76.

Constitutionality of statute limiting hours of labor in private industry, 90 A.L.R. 814.

Waiver or loss of statutory right to minimum wage or benefit of regulation as to hours of labor, 102 A.L.R. 842, 129 A.L.R. 1145.

51B C.J.S. Labor Relations §§ 1192 to 1203.

50-4-14. [Emergency cases; hours permitted; rate for excessive hours.]

Nothing in Section 3 [50-4-13 NMSA 1978] of this act, shall be construed so as to prevent work in excess of ten hours per day in emergency cases; provided that in no one week of seven days shall there be permitted more than seventy-four hours of labor, and provided that work in excess of seventy hours of labor in any one week of seven days, shall be paid for on the basis of time and one-half for such excess.

History: Laws 1933, ch. 149, § 4; 1941 Comp., § 57-315; 1953 Comp., § 59-3-15.

ANNOTATIONS

Cross references. — For time-and-a-half for more than 40 hours under the Minimum Wage Act, *see* 50-4-22 NMSA 1978.

For time-and-a-half for females for more than 40 hours, *see* 50-5-1 NMSA 1978.

For time-and-a-half for females for more than 48 hours, *see* 50-5-7 NMSA 1978.

For time-and-a-half for more than 56 hours for female transportation company employees, *see* 50-5-14 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4260 et seq.

51B C.J.S. Labor Relations § 1206.

50-4-15. [Uniform time for beginning work; notice of change.]

The beginning of the day of labor shall be uniform as provided for by the rules or regulations governing to [the] place of employment; provided, however, that in case any change in the time of the beginning of the day of labor is desired, it shall be the duty of

the management of such an establishment, to notify such employee of such change, on the day prior to such change contemplated, said notice shall be served during the working day.

History: Laws 1933, ch. 149, § 5; 1941 Comp., § 57-316; 1953 Comp., § 59-3-16.

ANNOTATIONS

Cross references. — For uniform time for beginning work for females, *see* 50-5-3 NMSA 1978.

50-4-16. [Time records; inspection.]

Every employer to whom this act [50-4-13 to 50-4-18 NMSA 1978] applies shall be required to keep a time record showing the number of hours each male employee worked each day.

Such record shall be open at all reasonable hours to the inspection of the state labor commissioner [director of the labor and industrial division], his agents or agent, record of which is required to be kept as herein provided for.

History: Laws 1933, ch. 149, § 6; 1941 Comp., § 57-317; 1953 Comp., § 59-3-17.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler and it is not part of the law.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

Cross references. — For time records and inspection thereof for women employees, *see* 50-5-8, 50-5-17 NMSA 1978.

This section applies to any and all employees of a hotel, including bellboys, desk clerks, chambermaids, etc. 1953 Op. Att'y Gen. No. 53-5704.

50-4-17. [Failure to keep record or comply with act; penalty.]

The failure of any employer [any employer who fails] to keep such a record, or [makes] any false entry therein, or the failure [fails] to comply with the provisions of this act [50-4-13 to 50-4-18 NMSA 1978], shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than seventy-five dollars [($75.00)], or more than three hundred dollars [($300)] for each offense.

History: Laws 1933, ch. 149, § 7; 1941 Comp., § 57-318; 1953 Comp., § 59-3-18.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler and it is not part of the law.

50-4-18. [Disposition of fines.]

All fines collected for violation of this act [50-4-13 to 50-4-18 NMSA 1978] shall be deposited with the state treasurer, and be covered in the free textbook fund.

History: Laws 1933, ch. 149, § 8; 1941 Comp., § 57-319; 1953 Comp., § 59-3-19.

ANNOTATIONS

50-4-19. Declaration of state public policy.

It is declared to be the policy of this act (1) to establish minimum wage and overtime compensation standards for all workers at levels consistent with their health, efficiency and general well-being, and (2) to safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hours standards which do not provide adequate standards of living.

History: 1953 Comp., § 59-3-20, enacted by Laws 1955, ch. 200, § 1.

ANNOTATIONS

Compiler's notes. — The words "this act" refer to Laws 1955, ch. 200, the unrepealed sections of which are compiled herein as 50-4-19, 50-4-21, 50-4-22, 50-4-25, 50-4-26, 50-4-28, 50-4-29 NMSA 1978.

Cross references. — For minimum wages on public works, *see* 13-4-11 to 13-4-17 NMSA 1978.

Act not preempted by federal law or collective bargaining agreement. — New Mexico Minimum Wage Act (Section 50-4-19 NMSA 1978 et seq.) claims brought by union workers covered by a collective bargaining agreement were not preempted by Section 301 of the Labor Management Act, 29 U.S.C. § 185 and were not preempted by

the remedies provided by the agreement; the claims were based on non-negotiable state law rights which could be resolved independently of the labor agreement. *Self v. UPS*, 1998-NMSC-046, 126 N.M. 396, 970 P.2d 582.

Minimum wage ordinance. — Minimum wage ordinance enacted by City of Santa Fe is within the power of the city to enact and is constitutional. *New Mexicans for Free Enter. v. City of Santa Fe*, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

A home rule municipality may set a minimum wage higher than that required by the state Minimum Wage Act because of the independent powers possessed by municipalities in New Mexico and the absence of any conflict with state law. *New Mexicans for Free Enter. v. City of Santa Fe*, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

Act permits home rule ordinances. — Municipal power to set minimum wage higher than that of Minimum Wage Act is not "expressly denied by general law" within the meaning of the home rule amendment. *New Mexicans for Free Enter. v. City of Santa Fe*, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

50-4-20. Short title.

Sections 50-4-19 through 50-4-30 NMSA 1978 may be cited as the "Minimum Wage Act".

History: 1953 Comp., § 59-3-20.1, enacted by Laws 1963, ch. 227, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who is employed in "executive capacity" within exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act (29 USCS § 201 et seq.), 131 A.L.R. Fed. 1

What constitutes "preschool" for purposes of § 3(s)(1)(b) of Fair Labor Standards Act (29 USCS § 203(s)(1)(b)), providing that preschools are subject to wage and hour provisions of act, 131 A.L.R. Fed. 207.

51B C.J.S. Labor Relations § 1017 et seq.

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 a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;

(2) an individual employed by 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, "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 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;

(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.

History: 1953 Comp., § 59-3-21, enacted by Laws 1955, ch. 200, § 2; 1963, ch. 227, § 2; 1965, ch. 121, § 1; 1967, ch. 188, § 1; 1971, ch. 232, § 1; 1973, ch. 392, § 1; 1975, ch. 71, § 1; 1975 (1st S.S.), ch. 3, § 1; 1977, ch. 214, § 1; 1979, ch. 269, § 1; 1983, ch. 311, § 1; 2007, ch. 46, § 45; 2007, ch. 47, § 1; 2008, ch. 2, § 1; 2019, ch. 114, § 1; 2019, ch. 242, § 2; 2021, ch. 10, § 1.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, revised the definition of "employee", as used in the Minimum Wage Act, to remove the exception to the minimum wage requirement for secondary school students; and deleted Paragraph C(6) and redesignated former Paragraphs C(7) through C(11) as Paragraphs C(6) through C(10).

2019 Amendments. — Laws 2019, ch. 114, § 1, effective January 1, 2020, removed exemptions from the minimum wage for students regularly enrolled in primary and secondary schools working after school hours or on vacation and for persons eighteen years of age or under who are not graduates of a secondary school; in Subsection C, deleted former Paragraph C(6) and redesignated former Paragraphs C(7) and C(8) as Paragraphs C(6) and C(7), respectively; and deleted former Paragraph C(9) and redesignated former Paragraphs C(10) through C(13) as Paragraphs C(8) through C(11), respectively.

Laws 2019, ch. 242, § 2, effective June 14, 2019, revised the definition of "employee" as used in the Minimum Wage Act, and removed the exception of domestic service from wage protections; and in Subsection C, deleted former Paragraph C(1) and redesignated former Paragraphs C(2) through C(1) as Paragraphs C(1) through C(13), respectively.

The 2008 amendment, effective January 18, 2008, changed the definitions of "employer" and "employee" to exclude the state or any political subdivision of the state, except that for purposes of Subsection A of 50-4-22 NMSA 1978, the state or any political subdivision of the state is included in the definitions of "employer" and "employee".

The 2007 amendment, effective January 1, 2008, in Subsection C, deleted Paragraph (10), relating to persons employed by ambulance services; relettered Paragraphs (11) to (13) as Paragraphs (10) to (12); added "or in milk production" to Subparagraph (3) of Paragraph (12); and added Paragraph (13) relating to an employee engaged in processing of any agricultural or horticultural commodity.

Workers' compensation cases not considered in construing meaning of "work". — In arguing the meaning of "work" in the context of the Minimum Wage Act, workers' compensation cases should not be considered because they deal with statutory definitions which differ from the definitions in the Minimum Wage Act. *Garcia v. Am. Furniture Co.*, 1984-NMCA-090, 101 N.M. 785, 689 P.2d 934, cert. denied, 101 N.M. 686, 687 P.2d 743 and 102 N.M. 7, 690 P.2d 450.

Coaching and managing employer's softball team not equivalent to "employment" by that employer for purposes of the Minimum Wage Act. *Garcia v. Am. Furniture Co.*, 1984-NMCA-090, 101 N.M. 785, 689 P.2d 934, cert. denied, 101 N.M. 686, 687 P.2d 743 and 102 N.M. 7, 690 P.2d 450.

Municipal employers. — Municipalities, as political subdivisions of the state, are not "employers" as defined by the Minimum Wage Act and are therefore exempt from the overtime compensation requirements of the act, but when a municipality elects to provide overtime compensation, it must comply with the overtime compensation schedule set forth in 50-4-2 NMSA 1978. *Rainaldi v. City of Albuquerque*, 2014-NMCA-112.

Substantial evidence supported finding that worker was administrative employee exempted from the act. *Valentine v. Bank of Albuquerque*, 1985-NMSC-033, 102 N.M. 489, 697 P.2d 489.

Worker paid on a piecemeal basis was exempt from the overtime provisions of the Minimum Wage Act. — Where a pick-up and delivery truck driver who worked for defendant motor carrier filed an action alleging that she was an employee, rather than an independent contractor, and thus entitled to overtime payments under the New Mexico Minimum Wage Act (MWA), §§ 50-4-19 through 50-4-30 NMSA 1978, and where the evidence established that plaintiff signed a contract that required her to pick up and deliver all packages in the service area each day in exchange for weekly settlement payments and that settlements included payments based on the number of stops and packages picked up and delivered, the number of miles driven, fuel settlements based on fuel price changes in the service area, a subsidy providing an additional stipend based on the number of stops made, and weekly payments, which included a per-package payment for any packages delivered outside the service area, defendant's motion for summary judgment was granted because the MWA explicitly excludes salespersons or employees compensated upon piecework, flat rate schedules or commission basis from its definition of employees covered by the act, and plaintiff was paid a specifically calculated rate per package picked up, per package delivered, per stop made on her route, and per excess mile driven in a given day, logical examples of a piecework compensation system. *Armijo v. FedEx Ground Package System, Inc.*, 405 F. Supp. 3d 1267 (D. N.M. 2019).

"Bona fide executive, administrative or professional" defined. — Adopting the federal department of labor's definition of "administrative, executive, and professional employee", an employee is an exempt administrative employee, pursuant to 50-4-21(C)(2) NMSA 1978, if the employee is compensated on a salary or fee basis at a rate of not less than $455 per week exclusive of board, lodging or other facilities, if the employee's primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers, and if the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. *Williams v. Mann*, 2017-NMCA-012.

Substantial evidence to support finding that employee qualified as an exempt administrative employee. — Where plaintiff brought a claim for unpaid overtime wages under the Minimum Wage Act (MWA), 50-4-19 to 50-4-30 NMSA 1978, the evidence presented at trial that plaintiff's $600 weekly salary was higher than the minimum wage for non-exempt employees under the MWA, that plaintiff's primary duties were related to management or general office operations, and involved the exercise of discretion and independent judgment with respect to matters of significance, including signing contracts with vendors, that plaintiff held herself out as an office manager, that plaintiff dealt with employee discipline and payroll issues, and that plaintiff managed patient information, including bill collection, insurance collection and payments, provided a substantial evidentiary basis for the district court to conclude that plaintiff was an exempt administrative employee under the MWA, and therefore not entitled to unpaid overtime wages. *Williams v. Mann*, 2017-NMCA-012.

Employees compensated on a commission basis are not entitled to overtime wages. — Where plaintiff, a former employee, brought an action on behalf of himself and proposed class against his former employer, alleging violations of New Mexico's Minimum Wage Act (NMMWA) due to employer's failure to pay overtime wages, defendant's motion for summary judgment was granted because defendant compensated plaintiffs on a commission basis, and Subsection C of this section provides that overtime pay requirements do not apply to employees compensated on a commission basis. *Corman v. JWS of New Mexico, Inc*., 356 F.Supp.3d 1148 (D. N.M. 2018).

Plain language of statute permitted finding that a supervisor could be an "employer" for purposes of the Minimum Wage Act. — Where employee, a lease operator, brought a putative class action against employer, an energy company, and a senior superintendent, alleging violations of the New Mexico Minimum Wage Act, 50-4-19 to 50-4-30 NMSA 1978 (act), and where the senior superintendent argued that claims against him should be dismissed because he cannot be an "employer" under the act, the motion to dismiss was denied because the plain language of the definition of "employer" provides that individuals employed by a company may be an "employer" themselves when they take certain actions in relation to employees on behalf of the corporate employer. *Anderson v. XTO Energy, Inc*., 341 F.Supp.3d 1272 (D. N.M. 2018).

Scope of coverage. — A desk clerk is a person employed in an establishment coming within the definition of service establishment. Unless the desk clerk can bring himself within the exceptions of Subsection C, Paragraphs (1) to (12) [now Paragraphs (1) to (7), (10) to (14)], he certainly is a service employee. 1955 Op. Att'y Gen. No. 55-6338 (rendered under prior law).

A retail sales clerk, employed for a 48-hour week, paid a minimum weekly wage of $30, plus commissions on sales, is not exempt from the Minimum Wage Act. 1957 Op. Att'y Gen. No. 57-248.

A nonprofit organization, furnishing working mothers with child day care services, where mothers pay for services on the basis of financial ability and the nursery is directed and staffed by a supervisor and several other persons who are paid for their services, creates an employer-employee relationship. The employees are persons who devote full time and energy to providing services for salaries or wages and are not exempt under Subsection C(4) of this section. 1968 Op. Att'y Gen. No. 68-04.

Tips may not be included in determining minimum wage. — Bellhops come under the provisions of this section as service employees, entitled to $.50 per hour as a minimum wage, but in the absence of an explicit understanding between parties, tips belong to the bellhop and cannot be included in determining minimum wage. 1955 Op. Att'y Gen. No. 55-6309 (rendered under prior law).

No exemption for irrigation district employees. — If immunity from suit and exemption from taxation are not necessary to carry out the purposes for which irrigation districts are organized, exemption from paying the minimum wage to employees of the district is not necessary for such a purpose. 1967 Op. Att'y Gen. No. 67-90.

Unless employed in agriculture. — Under certain situations one employed to supply water to be used for agricultural purposes may be employed in agriculture and therefore the employer would be exempt from the provisions of the Minimum Wage Act. It is a question of fact whether this would include specific employees of irrigation districts. 1967 Op. Att'y Gen. No. 67-90.

Piece-work basis employees exempt. — The compensation of employees for the separation of mica on the basis of so much per 100 or 200 pounds constitutes the employment of labor on a piece-work basis and is, therefore, exempt from the requirements of the New Mexico wage and hour laws. 1958 Op. Att'y Gen. No. 58-204.

Goodwill workers may not be employees under this section. — Goodwill Industries of New Mexico, Inc., is organized as a nonprofit organization for exclusively religious, charitable and educational purposes. It provides rehabilitation services, training, employment and opportunities for the handicapped, disabled and disadvantaged who are unable to compete in the open labor market. 1968 Op. Att'y Gen. No. 68-02.

Two businesses not single employer. — The fact that the two businesses occupy proximate premises or even the same premises does not make them a single employing unit. 1957 Op. Att'y Gen. No. 57-173.

Hospital employees. — Hospitals did not have to pay their employees the hourly wage rate prescribed by the 1963 Minimum Wage Act because hospital employees were not covered by the minimum wage provision pertaining to "employees". 1963 Op. Att'y Gen. No. 63-67 (rendered under prior law).

Law reviews. — For note, "Public Labor Disputes - A Suggested Approach for New Mexico," see 1 N.M. L. Rev. 281 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who is employed in "professional capacity," within exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act, 77 A.L.R. Fed. 681.

What constitutes "amusement or recreational establishment" within meaning of seasonal amusement exemption from Fair Labor Standards Act (29 USCS § 213(a)(3)), 88 A.L.R. Fed. 880.

Validity and construction of domestic service provisions of Fair Labor Standards Act (29 U.S.C. §§ 201 et seq.), 165 A.L.R. Fed. 163.

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.

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 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.

History: 1953 Comp., § 59-3-22, enacted by Laws 1955, ch. 200, § 3; 1957, ch. 161, § 1; 1963, ch. 227, § 3; 1965, ch. 121, § 2; 1967, ch. 188, § 2; 1973, ch. 392, § 2; 1975 (1st S.S.), ch. 3, § 2; 1979, ch. 269, § 2; 1983, ch. 59, § 1; 1993, ch. 217, § 1; 1999, ch. 164, § 1; 2003, ch. 262, § 1; 2005, ch. 302, § 1; 2005, ch. 306, § 1; 2007, ch. 47, § 2; 2019, ch. 114, § 2; 2021, ch. 10, § 2.

ANNOTATIONS

Cross references. — For time-and-a-half for more than 40 hours for females, *see* 50-5-1 NMSA 1978.

For time-and-a-half for more than 48 hours for females, *see* 50-5-7 NMSA 1978.

For time-and-a-half for more than 56 hours for female transportation company employees, *see* 50-5-14 NMSA 1978.

For the federal Fair Labor Standards Act, *see* 29 U.S.C. § 201 et seq.

The 2021 amendment, effective June 18, 2021, removed the lower minimum wage requirement for secondary school students; in Subsection A, after "Subsection", changed "B or D" to "C"; and deleted former Subsection B and redesignated former Subsections C through E as Subsections B through D, respectively.

The 2019 amendment, effective January 1, 2020, raised the minimum wage, and provided a separate minimum wage for employed secondary school students; deleted former Subsection A and added new Subsections A and B and redesignated former

Subsections B through D as Subsections C through E, respectively; in Subsection D, in the introductory clause, after "hourly wage", deleted "of two dollars thirteen cents ($2.13). The" and added "as follows", added Paragraphs D(1) through D(5) and new paragraph designation "(6)", and in Paragraph D(6), after "pooling of tips among", deleted "employees" and added "wait staff".

The 2007 amendment, effective January 1, 2008, in Subsection A, increased the minimum wage from $5.15 to $6.50 an hour, effective January 1, 2008 and from $6.50 to $7.50, effective January 1, 2009.

The 2005 amendment, effective June 17, 2005, changed the minimum hourly wage of employees who receive more than $30 a month in tips from $2.125 to $2.13 in Subsection B; deleted the former provision in Subsection B that an employer may consider tips a part of wages, but not to exceed fifty percent of the minimum wage, and provided in Subsection B that tips may be considered part of wages, but tips combined with the employer's cash wage shall not equal less than $5.60 per hour.

The 2003 amendment, effective June 20, 2003, substituted "five dollars fifteen cents ($5.15)" for "four dollars twenty-five cents ($4.25)" near the middle of Subsection A.

The 1999 amendment, effective June 18, 1999, added the last sentence in Subsection C and made minor stylistic changes.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

Meaning of "any week of seven days". — The phrase "any week of seven days" in Subsection C of Section 50-4-22 NMSA 1978 means a fixed and regularly recurring workweek established by the employer consistent with the federal Fair Labor Standards Act and regulations promulgated under the authority of the Fair Labor Standards Act. *Sinclaire v. Elderhostel, Inc.*, 2012-NMCA-100, 287 P.3d 978.

Where defendant’s established workweek was from 12:01 a.m. Sunday to midnight the following Saturday; plaintiff led educational tours for defendant, some of which corresponded with the Sunday to Saturday workweek and some of which began on Wednesday and concluded the following Wednesday; if plaintiff worked from Wednesday to Wednesday, plaintiff received two hours of overtime in the first Sunday to Saturday workweek and eight hours of overtime in the in the second workweek; if plaintiff worked more than forty hours during a Sunday to Saturday week, plaintiff received time and a half for each hour over forty hours; and plaintiff claimed that defendant should have paid plaintiff overtime based on the seven-day week plaintiff actually worked, rather than on the Sunday to Saturday workweek, defendant’s establishment of the fixed Sunday to Saturday workweek qualified as a "week of seven days" under Subsection C of Section 50-4-22 NMSA 1978. *Sinclaire v. Elderhostel, Inc.*, 2012-NMCA-100, 287 P.3d 978.

Plaintiff's claim survived dismissal where it was alleged that he routinely worked over forty hours and was denied overtime pay. — In a federal class action lawsuit, where plaintiff claimed that defendant employer regularly scheduled class members to work for a minimum of 12 hours per day and a minimum of 84 hours per week, that class members routinely worked over 80 hours per week, and that defendant failed to pay class members any overtime premium for all hours worked in excess of 40 per workweek, and where defendant moved to dismiss, claiming that plaintiff failed to plead sufficient facts to support a reasonable inference that plaintiff received less than the overtime pay due because plaintiff failed to identify a specific workweek in which he worked more than 40 hours and was denied overtime pay, plaintiff was not required to specify a particular workweek in which he worked more than 40 hours because plaintiff alleged that the general length of hours worked in a week was over 84 hours, well above the 40-hour threshold, and this provides defendant with a sufficient factual context to nudge plaintiff's claim from conceivable to plausible to state a claim for relief for failure to pay overtime as required by the *Minimum Wage Act. Gandy v. RWLS, LLC*, 308 F.Supp.3d 1220 (D.N.M. 2018).

Contract for diminishing overtime wages. — An employer and employee may not agree to a fluctuating rate of pay, pursuant to which the employee is paid a fixed weekly salary plus an overtime factor of one-half of the hourly rate, which hourly rate is calculated such that it decreases as the number of hours worked increases because the agreement conflicts with the prohibition against overtime paid at less than time and a half. *N.M. Dep't of Labor v. Echostar Commc'ns Corp.*, 2006-NMCA-047, 139 N.M. 493, 134 P.3d 780, cert. quashed, 2006-NMCERT-010, 140 N.M. 675, 146 P.3d 810.

"Required to work" includes subtle pressures. — Overtime pay is mandatory when an employee covered by the Minimum Wage Act (Section 50-4-19 NMSA 1978 et seq.) works more than forty hours in a seven-day week with the employer's knowledge and consent, and where there is any pressure by the employer, however subtle, to perform such work. *N.M. Dep't of Labor v. A.C. Elec., Inc.*, 1998-NMCA-141, 125 N.M. 779, 965 P.2d 363.

"Banked" time off violates minimum wage laws. — Employer cannot avoid overtime payments to employees by offering them "banked" time off in exchange for working uncompensated overtime. *N.M. Dep't of Labor v. A.C. Elec., Inc.*, 1998-NMCA-141, 125 N.M. 779, 965 P.2d 363.

Conditional class certification under the Minimum Wage Act. — Where plaintiffs, five non-exempt employees of a non-profit, integrated acute care hospital, brought a putative collective and class action alleging that their employer failed to pay plaintiffs and other non-exempt employees for time they spent working during meal breaks in violation of the Minimum Wage Act (MWA), the district court erred in denying plaintiffs' motion to conditionally certify a collective action, because plaintiffs' allegations, supported by affidavits, that the putative class was sometimes required to work through meal breaks, but not compensated for such work, and that such potential violations of the MWA stemmed from a single policy or plan to not only schedule workers in such a

way that missing meal periods was sometimes unavoidable, but also to discourage employees from using the "no lunch" button that would have resulted in full compensation for time worked, satisfy the minimal standards associated with the notice stage determination of whether plaintiffs are similarly situated. *Sloane v. Rehoboth McKinley Christian Health Care Servs.*, 2018-NMCA-048.

Municipal employers. — Municipalities, as political subdivisions of the state, are not "employers" as defined by the Minimum Wage Act and are therefore exempt from the overtime compensation requirements of the act, but when a municipality elects to provide overtime compensation, it must comply with the overtime compensation schedule set forth in 50-4-2 NMSA 1978. *Rainaldi v. City of Albuquerque*, 2014-NMCA-112.

Administrative employee not entitled to unpaid overtime. — Where plaintiff brought a claim for unpaid overtime wages under the Minimum Wage Act (MWA), 50-4-19 to -30 NMSA 1978, the evidence presented at trial that plaintiff's $600 weekly salary was higher than the minimum wage for non-exempt employees under the MWA, that plaintiff's primary duties were related to management or general office operations, and involved the exercise of discretion and independent judgment with respect to matters of significance, including signing contracts with vendors, that plaintiff held herself out as an office manager, that plaintiff dealt with employee discipline and payroll issues, and that plaintiff managed patient information, including bill collection, insurance collection and payments, provided a substantial evidentiary basis for the district court to conclude that plaintiff was an exempt administrative employee under the MWA, and therefore not entitled to unpaid overtime wages. *Williams v. Mann*, 2017-NMCA-012.

Penalty provision applies to both minimum wage and overtime claims. — When 50-4-26(C) NMSA 1978 refers to "minimum wages" in its plural form, particularly where it follows the broad "any provision" introductory language, it is clear that the legislature contemplated an award of liquidated damages to both minimum wage and overtime claimants bringing a claim under any provision of 50-4-22 NMSA 1978. *Armijo v. FedEx Ground Package System, Inc*., 285 F.Supp.3d 1209 (D.N.M. 2018).

Where plaintiff executed a contract with defendant to work as a "pickup and delivery contractor", and where plaintiff, after three years as a contractor, brought a claim against defendant, alleging that defendant violated the Minimum Wage Act, §§ 50-4-19 through -30 NMSA 1978, by failing to pay drivers overtime pay for hours worked over 40 in one week, defendant's claim that § 50-4-26(C) NMSA 1978 applies only to violations of the minimum wage provisions, not to the overtime provisions of § 50-4-22 NMSA 1978, was without merit, because the plural "minimum wages" language in § 50-4-26(C) NMSA 1978 provides for damages for claimants bringing a claim under "any provision" of § 50-4-22 NMSA 1978. *Armijo v. FedEx Ground Package System, Inc*., 285 F.Supp.3d 1209 (D.N.M. 2018).

Act not preempted by federal law or collective bargaining agreement. — New Mexico Minimum Wage Act (Section 50-4-19 NMSA 1978 et seq.) claims brought by

union workers covered by a collective bargaining agreement were not preempted by Section 301 of the Labor Management Act, 29 U.S.C. § 185 and were not preempted by the remedies provided by the agreement; the claims were based on non-negotiable state law rights which could be resolved independently of the labor agreement. *Self v. UPS*, 1998-NMSC-046, 126 N.M. 396, 970 P.2d 582.

Travel time is not compensable under the Minimum Wage Act. — The general rule is that commuting time to and from a job site is not compensable absent an agreement to the contrary. The Minimum Wage Act, being silent on travel time, does not create an exception to the general rule. *Segura v. J.W. Drilling, Inc.*, 2015-NMCA-085, cert. denied, 2015-NMCERT-008.

Where employees claimed that employer failed to pay them for overtime wages for the time spent traveling from their homes to employer's job sites, the New Mexico court of appeals declined to deviate from the general rule that commuting time to and from a job site is not compensable when the Minimum Wage Act is silent on travel time. *Segura v. J.W. Drilling, Inc.*, 2015-NMCA-085, cert. denied, 2015-NMCERT-008.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4188 et seq.

Validity of minimum wage statutes relating to private employment, 39 A.L.R.2d 740.

Tips as wages, 65 A.L.R.2d 974.

Vacation pay rights of private employees not covered by collective labor contract, 33 A.L.R.4th 264.

Who is executive, administrator, supervisor, or the like, under exemption for such employees from state minimum wage and overtime pay statutes, 85 A.L.R.4th 519.

Employee training time as exempt from minimum wage and overtime requirements of Fair Labor Standards Act, 80 A.L.R. Fed. 246.

51B C.J.S. Labor Relations § 1017 et seq.

50-4-22.1. Temporary state preemption; saving clause.

A. Except as provided in Subsection B of this section, cities, counties, home rule municipalities and other political subdivisions of the state shall not adopt or continue in effect any law or ordinance that would mandate a minimum wage rate higher than that set forth in the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978]. The provisions of this subsection expire on January 1, 2010.

B. A local law or ordinance, whether advisory or self-executing, in effect on January 1, 2007 that provides for a higher minimum wage rate than that set forth in the Minimum Wage Act shall continue in full force and effect until repealed.

History: Laws 2007, ch. 47, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 47, § 4 made Laws 2007, ch. 47, § 3 effective January 1, 2008.

50-4-23. Persons with a disability; minimum wage; director powers and duties.

A. The director of the labor and industrial division of the labor department, to the extent necessary in order to prevent curtailment of opportunities for employment, shall, by regulation, provide for the employment under special certificates of individuals, including individuals employed in agriculture, whose earning or productive capacity is impaired by physical or mental disability or injury or any other disability, at wages that are lower than the minimum wage applicable under Section 50-4-22 NMSA 1978, but not less than fifty percent of such wage.

B. The director, pursuant to regulations and upon certification of any state agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates that allow the holder thereof to work at wages that are less than those required by Subsection A of this section and that are related to the workers' productivity, for the employment of:

(1) workers with a disability who are engaged in work that is incidental to training or evaluation programs; and

(2) persons with multiple disabilities and other persons whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

C. The director may, by regulation or order, provide for the employment of persons with a disability in work activities centers under special certificates at wages that are less than the minimums applicable under Section 50-4-22 NMSA 1978, or less than that prescribed in Subsection A of this section, and that constitute equitable compensation for such persons. As used in this subsection, "work activities centers" means centers planned and designed exclusively to provide therapeutic activities for persons with a disability whose physical or mental disability is so severe as to make their productive capacity inconsequential.

D. The state agency administering or supervising the administration of vocational rehabilitation may issue a temporary certificate for a period not to exceed ninety days

pursuant to Subsections A, B and C of this section and may request an extension of the certification by the director when it is determined that the severity of disability of an individual or circumstances warrants an extension of the certification.

History: 1953 Comp., § 59-3-22.1, enacted by Laws 1967, ch. 242, § 1; 2007, ch. 46, § 46.

ANNOTATIONS

Compiler's notes. — The labor department referred to in Subsection A has been repealed by Laws 2007, ch. 200.

The 2007 amendment, effective June 15, 2007, made non-substantive language changes.

Legislative intent. — This section does not use the term "employee" in describing those intended to be covered by its provisions. The legislature undoubtedly was aware that a true employer-employee relationship does not in fact exist between an organization such as goodwill industries and its handicapped workers and avoided the "employee" terminology to assure coverage for these workers. 1968 Op. Att'y Gen. No. 68-02.

Handicapped within scope of section. — Goodwill's handicapped workers are within the scope of this section and may not be employees under 50-4-21 C(4) NMSA 1978. 1968 Op. Att'y Gen. No. 68-02.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Charity-sponsored work programs for handicapped persons as subject to provisions of National Labor Relations Act (29 USCS § 141 et seq.), 68 A.L.R. Fed. 905.

50-4-24. Employers exempt from overtime provisions for certain employees.

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

B. An employer of workers engaged in agriculture is exempt from the overtime provisions set forth in Subsection D of Section 50-4-22 NMSA 1978. As used in this subsection, "agriculture" has the meaning used in Section 203 of the federal Fair Labor Standards Act of 1938.

C. An employer is exempt from the overtime provisions set forth in Subsection D of Section 50-4-22 NMSA 1978 if the hours worked in excess of forty hours in a week of seven days are:

(1) worked by an employee of an air carrier providing scheduled passenger air transportation subject to Subchapter II of the federal Railway Labor Act or the air carrier's subsidiary that is subject to Subchapter II of the federal Railway Labor Act;

(2) not required by the employer; and

(3) arranged through a voluntary agreement among employees to trade scheduled work shifts; provided that the agreement shall:

(a) be in writing;

(b) be signed by the employees involved in the agreement;

(c) include a requirement that an employee who trades a scheduled work shift is responsible for working the shift so agreed to as part of the employee's regular work schedule; and

(d) not require an employee to work more than: 1) thirteen consecutive days; 2) sixteen hours in a single work day; 3) sixty hours within a single work week; or 4) can be required as provided in a collective bargaining agreement to which the employee is subject.

History: 1953 Comp., § 59-3-22.2, enacted by Laws 1975, ch. 275, § 1; 1999, ch. 98, § 1; 2013, ch. 216, § 1.

ANNOTATIONS

Repeals. — Laws 2015, ch. 21, § 1 repealed Laws 2013, ch. 216, § 2, effective June 19, 2015. Laws 2013, ch. 216, § 2 repealed and enacted a new 50-4-24 NMSA 1978, which was to become effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

Cross references. — For the federal Fair Labor Standards Act, *see* 29 U.S.C. § 201 et seq.

The 2013 amendment, effective July 1, 2013, permitted airline employees to voluntarily trade shifts; exempted airlines from the requirements of paying employees one and one-half times an employee’s hourly rate of pay for each hour worked over forty hours in any week of seven days in which the airline has no required overtime hours and employees have voluntarily traded hours; in Subsection A, after "commercial quantities"; deleted "and " and added "is exempt from the overtime provisions of Subsection D of Section

50-4-22 NMSA 1978 if", and after "calendar year", deleted "is exempt from the overtime provisions of Subsection C of Section 50-4-22 NMSA 1978; and added Subsection C.

The 1999 amendment, effective June 18, 1999, added the Subsection A designation, updated a statutory reference, and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who is executive, administrator, supervisor, or the like, under exemption for such employees from state minimum wage and overtime pay statutes, 85 A.L.R.4th 519.

Who is "employee employed in agriculture" and therefore exempt from overtime provisions of Fair Labor Standards Act by § 13 (b)(12) of Act (29 U.S.C.A. § 213(b)(12)), 162 A.L.R. Fed. 575.

50-4-25. Posting of summary of the act.

Every employer subject to the Minimum Wage Act [50-4-19 to 5-4-30 NMSA 1978] shall keep a summary of it, furnished by the labor commissioner [director of the labor and industrial division] without charge, posted in a conspicuous place on or about the premises wherein any person subject to the Minimum Wage Act is employed, and the summary shall clearly and conspicuously set forth the current minimum wage.

History: 1953 Comp., § 59-3-23, enacted by Laws 1955, ch. 200, § 4; 1967, ch. 188, § 3; 1969, ch. 88, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler and it is not part of the law.

50-4-26. Enforcement; penalties; employees' remedies.

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. The director of the labor relations division of the workforce solutions department shall enforce and prosecute violations of the Minimum Wage Act. The director may institute in the name of the state an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein any violation hereof occurs shall aid and assist the director in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees

affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

E. The court in any action brought under Subsection D of this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

F. In addition to any remedy or punishment provided pursuant to the Minimum Wage Act, a court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer.

G. Civil actions and appeals of civil actions brought to collect unpaid or underpaid wages, interest and any other amounts due under this section shall be heard by the court at the earliest possible date and shall be entitled to a preference over all other civil actions, to the same extent as civil actions to collect contributions pursuant to Section 51-1-36 NMSA 1978, on the calendar of the court.

History: 1953 Comp., § 59-3-24, enacted by Laws 1955, ch. 200, § 5; 1967, ch. 188, § 4; 2009, ch. 104, § 4; 2013, ch. 182, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided that civil actions and appeals brought to collect unpaid or underpaid wages shall have the same preference to be heard by the court as civil actions to collect unemployment contributions; and added Subsection G.

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "Penalties: (1) Any"; changed "foregoing provisions shall be deemed" to "provisions of the Minimum Wage Act is"; deleted the former language that provided for a fine of not less than $25 or more than $300 or imprisonment for not less than 10 or more than 90 days, or both a fine and imprisonment; and added the remainder of the sentence following "misdemeanor and"; in Subsection B, added "The director of the labor relations division of the workforce solutions department shall" at the beginning of the sentence; and at the beginning of the third sentence, deleted "It shall be the duty of"; in Subsection C, deleted "Employee's remedies: (1) Any" and added "In addition to penalties provided pursuant to this section, an"; changed the reference from Section 59-3-22 NMSA 1978

to Section 50-4-22 NMSA 1978; after "unpaid", added "or underpaid", and deleted "as the case may be, and in an additional equal amount as liquidated damages", and added the language after "minimum wages"; in Subsection E, deleted "Paragraph (2)" and added "Subsection D of this section"; and added Subsection F.

Standard to determine when employees are similarly situated. — The "two-tiered" or "ad hoc" approach is the proper standard to apply to collective actions. At the initial notice stage determination of whether plaintiffs are similarly situated, the plaintiff need only present substantial allegations that the putative class members were together the victims of a single decision, policy or plan. At the second stage, the court must revisit the initial determination by considering whether the class members have disparate factual and employment settings; whether the available defenses to the claims are individual to each class member; and whether there are any fairness or procedural considerations relevant to the action. *Armijo v. Wal-Mart Stores, Inc*., 2007-NMCA-120, 142 N.M. 557, 168 P.3d 129, cert. denied, 2007-NMCERT-009, 142 N.M. 715, 169 P.3d 408.

Initial notice stage determination of whether plaintiffs are similarly situated. — Where plaintiffs, five non-exempt employees of a non-profit, integrated acute care hospital, brought a putative collective and class action alleging that their employer failed to pay plaintiffs and other non-exempt employees for time they spent working during meal breaks in violation of the Minimum Wage Act (MWA), the district court erred in denying plaintiffs' motion to conditionally certify a collective action, because plaintiffs' allegations, supported by affidavits, that the putative class was sometimes required to work through meal breaks, but not compensated for such work, and that such potential violations of the MWA stemmed from a single policy or plan to not only schedule workers in such a way that missing meal periods was sometimes unavoidable, but also to discourage employees from using the "no lunch" button that would have resulted in full compensation for time worked, satisfy the minimal standards associated with the notice stage determination of whether plaintiffs are similarly situated. *Sloane v. Rehoboth McKinley Christian Health Care Servs.*, 2018-NMCA-048.

Penalty provision in subsection C applies to both minimum wage and overtime claims. — When 50-4-26(C) NMSA 1978 refers to “minimum wages” in its plural form, particularly where it follows the broad “any provision” introductory language, it is clear that the legislature contemplated an award of liquidated damages to both minimum wage and overtime claimants bringing a claim under any provision of 50-4-22 NMSA 1978. *Armijo v. FedEx Ground Package System, Inc*., 285 F.Supp.3d 1209 (D.N.M. 2018).

Where plaintiff executed a contract with defendant to work as a “pickup and delivery contractor”, and where plaintiff, after three years as a contractor, brought a claim against defendant, alleging that defendant violated the Minimum Wage Act, §§ 50-4-19 through -30 NMSA 1978 by failing to pay drivers overtime pay for hours worked over 40 in one week, defendant’s claim that § 50-4-26(C) NMSA 1978 applies only to violations of the minimum wage provisions, not to the overtime provisions of § 50-4-22 NMSA

1978, was without merit, because the plural “minimum wages” language in § 50-4-26(C) NMSA 1978 provides for damages for claimants bringing a claim under “any provision” of § 50-4-22 NMSA 1978. *Armijo v. FedEx Ground Package System, Inc*., 285 F.Supp.3d 1209 (D.N.M. 2018).

Wage collection authority. — This article and article 4 of this chapter do not specifically provide the division with the authority to issue judgments or warrants for the collection of wages due; rather, these statutes simply allow the division to prosecute a wage collection action in magistrate court or district court if it determines that an employee's wage claim is "valid and enforceable." *Southworth v. Santa Fe Servs. Inc.*, 1998-NMCA-109, 125 N.M. 489, 963 P.2d 566.

Summary judgment erroneous in wage claim. — Employer's affidavit that employee was salaried, and thus not entitled to overtime, and had not accrued vacation time under her employment contract and employer's vacation policy, combined with a copy of the employment contract and other documentation, was sufficient to establish that there were disputed issues of fact concerning employer's liability for overtime and vacation pay which precluded summary judgment. *Southworth v. Santa Fe Servs. Inc.*, 1998-NMCA-109, 125 N.M. 489, 963 P.2d 566.

Standard of review. — Action under Subsection B was separate from employee's administrative action brought before labor department; it was not a substitute for an appeal and thus the district court was not required to apply the whole-record standard of review applicable to a review of an administrative decision. *Southworth v. Santa Fe Servs. Inc.*, 1998-NMCA-109, 125 N.M. 489, 963 P.2d 566.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4188 et seq.

73A C.J.S. Public Administrative Law and Procedure § 172 et seq.

50-4-26.1. Retaliation prohibited.

It is a violation of the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978] for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing another person about employment rights or other rights provided by law.

History: Laws 2009, ch. 104, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 104 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

50-4-27. Authority of labor commissioner [director of the labor and industrial division] to promulgate rules; hearing on rules; notice; publication.

The state labor commissioner [director of the labor and industrial division] shall have the authority to promulgate and issue rules and regulations necessary to administer and accomplish the purposes of the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978]. Such rules and regulations shall be adopted after notice and public hearing. A copy of the notice of hearing together with a copy of the proposed regulations shall be filed with the librarian of the supreme court library at least twenty days prior to the hearing. In addition, a copy of the notice of hearing shall be sent to all known interested persons. Any interested person shall have the right to appear and present evidence.

History: 1953 Comp., § 59-3-24.1, enacted by Laws 1967, ch. 188, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department."

Cross references. — For the State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.

73 C.J.S. Public Administrative Law and Procedure § 87 et seq.

50-4-28. Right of collective bargaining.

Nothing in this act shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through

representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this act.

History: 1953 Comp., § 59-3-25, enacted by Laws 1955, ch. 200, § 6.

ANNOTATIONS

Compiler's notes. — The words "this act" refer to Laws 1955, ch. 200, the unrepealed sections of which are compiled herein as 50-4-19, 50-4-21, 50-4-22, 50-4-25, 50-4-26, 50-4-28, 50-4-29 NMSA 1978.

Application of the federal Labor Management Relations Act. — Where defendant terminated plaintiff's employment because plaintiff, who was a produce manager in one of defendant's grocery stores, was engaged in union-organizing activities at the store and plaintiff's claims did not originate in a collective bargaining agreement, plaintiff's claims were not preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a) (2000). *Humphries v. Pay and Save, Inc.*, 2011-NMCA-035, 150 N.M. 444, 261 P.3d 592.

Claims preempted under the federal National Labor Relations Act. — Where defendant terminated plaintiff's employment because plaintiff, who was a produce manager in one of defendant's grocery stores, was engaged in union-organizing activities at the store, plaintiff's claims, whether plaintiff was an employee or a supervisor, were preempted by Sections 7 and 8 of the federal National Labor Relations Act, 29 U.S.C. §§ 157 and 158. *Humphries v. Pay and Save, Inc.*, 2011-NMCA-035, 150 N.M. 444, 261 P.3d 592.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure to pursue or exhaust remedies under union contract as affecting employee's right of state civil action for retaliatory discharge, 32 A.L.R.4th 350.

Collective bargaining agreement as restricting right to engage in concerted activities, other than striking or picketing, under § 7 of National Labor Relations Act (29 USCS § 157), 69 A.L.R. Fed. 812.

Employer's duty to furnish wage information to employees' representative under National Labor Relations Act, 112 A.L.R. Fed. 81.

Reasonableness of qualifications for union office under § 401(c) of Labor-Management Reporting and Disclosure Act (29 USCA § 481(c)), 147 A.L.R. Fed. 389.

50-4-29. Relation to other laws.

Any standards relating to minimum wage, maximum hour or other working conditions in effect at the date of the passage of this act by or under any other law of this state, which are more favorable to employees than those applicable to such employees under

this act, shall not be deemed to be amended, rescinded or otherwise affected by this act but shall continue in full force and effect.

History: 1953 Comp., § 59-3-26, enacted by Laws 1955, ch. 200, § 7.

ANNOTATIONS

Compiler's notes. — The words "this act" refer to Laws 1955, ch. 200, the unrepealed sections of which are compiled herein as 50-4-19, 50-4-21, 50-4-22, 50-4-25, 50-4-26, 50-4-28, 50-4-29 NMSA 1978.

Act permits home rule ordinances. — In passing the Minimum Wage Act, the legislature allowed any existing local minimum wage ordinances that were more favorable to employees to stay in effect. *New Mexicans for Free Enter. v. City of Santa Fe*, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

50-4-30. Daily maximum hours of employment; exceptions.

A. No employee other than a fireman, law enforcement officer or farm or ranch hand whose duties require them to work longer hours, or employees primarily in a stand-by position, shall be required to work for any employer within the state more than sixteen hours in any one day of twenty-four hours except in emergency situations.

B. Any person violating any of the provisions of this act [section] shall be guilty of a misdemeanor.

History: 1953 Comp., § 59-3-27, enacted by Laws 1971, ch. 169, § 1.

ANNOTATIONS

Cross references. — For maximum hours of employment for females, *see* 50-5-1 to 50-5-17 NMSA 1978.

For eight-hour day in public employment, *see* N.M. Const., art. XX, § 19.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 4191 et seq.

What employers are within "hours of labor" statutes, 16 A.L.R. 537.

Constitutionality of statutes limiting hours of labor in private industry, 90 A.L.R. 814.

51B C.J.S. Labor Relations §§ 1186 to 1209.

50-4-31. Minimum length of hoe handles.

A. An employer of agricultural laborers shall not require an employee to use a hoe that has a handle shorter than four feet while performing agricultural labor that includes weeding, thinning or hot-capping in a stooped, kneeling or squatting position for a commercial farming operation.

B. An employer who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. This section does not apply to an employer engaged in the operation of a greenhouse or nursery.

History: Laws 1999, ch. 235, § 1.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 235 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 18, 1999, 90 days after adjournment of the legislature.

50-4-32. Continuing course of conduct.

A civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 may encompass all violations that occurred as part of a continuing course of conduct regardless of the date on which they occurred.

History: Laws 2009, ch. 104, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 104 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

50-4-33. Family child care provider collective bargaining; representation.

A. The purpose of this section is to authorize family child care providers to organize and to use collective bargaining on all matters specified in this section. It is the intent of the legislature that the state action exemption to the application of federal and state antitrust laws be fully available to the extent that the activities of the family child care providers and their representatives are authorized under this section.

B. Family child care providers shall have the right to form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by family child care providers without interference, restraint or coercion and shall have the right to refuse any such activities.

C. The exclusive representative may be selected by mail ballot election conducted by a reputable organization with experience in conducting representation elections. In order for an election to occur, a representative or representative organization shall have collected signed cards from at least thirty percent of affected family child care providers indicating their desire for representation. The organization conducting the election shall establish procedures to ensure the secrecy of any ballot cast in any election held pursuant to this section. Costs of the election shall be borne by the labor organization seeking exclusive representative status. The providers in the unit shall be offered the opportunity to choose between the following:

(1) representation by the provider organization; or

(2) no representation.

D. Within ten days of receiving authorization cards requesting a mail-in ballot election, the children, youth and families department or another appropriate state agency shall submit a list verifying all eligible family child care providers in the state to the organization making the request.

E. A labor organization that has been certified through the process as representing the family child care providers shall be the exclusive representative for all family child care providers for the purposes of negotiating a collective bargaining agreement with the children, youth and families department.

F. The children, youth and families department shall meet with the family child care providers and their exclusive representative with the purpose of entering into a written agreement that shall be binding upon both the state and the exclusive representative. The written agreement shall include a binding arbitration procedure, a grievance process, the creation of a labor-management committee that will meet regularly to discuss concerns and issues as they arise and mechanisms for dues collection.

G. Topics of negotiations shall include terms and conditions under which family child care providers provide child care in their homes and in the homes of parents, including reimbursement rates and payment procedures for publicly funded care, health and safety conditions, the monitoring and evaluating of family child care homes, licensing and other fees, quality rating standards, training and certification requirements and any other matters that would improve recruitment and retention of qualified family child care providers and the quality of the programs they provide. The labor organization and the state agency shall work together to explore systems for family child care providers to have access to affordable, comprehensive health insurance coverage.

H. An agreement provision by the state and the exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds.

I. In order to ensure that the children, youth and families department's mandate for quality measures continues for all licensed providers of child care services, the department shall ensure the adequate allocation of appropriated funds to those providing the highest-quality care, including licensed centers and licensed family child care providers.

J. Should the parties be unable to reach an agreement, the parties shall follow the impasse resolution procedure as outlined in the Public Employee Bargaining Act [Chapter 10, Article 7E NMSA 1978].

K. The children, youth and families department shall not:

(1) discriminate or knowingly allow any other organizations with which the children, youth and families department contracts to administer services related to child care to discriminate against a family child care provider with regard to the terms and conditions of its relationship with the provider because of the provider's membership in a labor organization;

(2) take negative action against a family child care provider or knowingly allow any other organizations with which the children, youth and families department contracts to administer services related to child care to take negative action because the provider has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or because the provider is forming, joining or choosing to be represented by a labor organization;

(3) refuse to bargain collectively in good faith with the labor organization; or

(4) refuse to comply with a collective bargaining agreement reached with the labor organization pursuant to this section.

L. The labor organization shall not:

(1) discriminate against a family child care provider with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

(2) refuse to bargain collectively in good faith with the children, youth and families department; or

(3) refuse to comply with a collective bargaining agreement reached with the children, youth and families department pursuant to this section.

M. If either party believes a provision of this section has been violated, the parties shall follow the public employee labor relations board's rules of prohibited practice proceedings.

N. By entering into an agreement, the children, youth and families department and the exclusive representative do not intend to interfere with parental rights to select or deselect family child care providers to provide care for children.

O. In enacting bargaining rights for family child care providers, the state intends to provide state action immunity under federal and state antitrust laws for the activities of family child care providers and their exclusive bargaining representative to the extent such activities are authorized by this section.

P. A family child care provider or an employee of a family child care provider is not a public employee for purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

Q. As used in this section:

(1) "exclusive representative" means a labor organization that, as a result of certification, has the right to represent family child care providers in an appropriate bargaining unit for the purposes of collective bargaining;

(2) "family child care provider" means a person who provides care services and supervision for children in the provider's own home under regulations established by the children, youth and families department and who is:

(a) licensed by the state and is a vendor in the state and federal child care assistance program; or

(b) registered with the state to participate in the child and adult care food program and is a vendor in the state and federal child care assistance program; and

(3) "labor organization" means a family child care provider organization whose purposes include the representation of family child care providers in collective bargaining and in otherwise meeting, consulting and conferring with the children, youth and families department on matters pertaining to family child care provider relations.

R. If any part or application of this section is held invalid, the remainder or its application to other situations or persons shall not be affected.

History: Laws 2009, ch. 238, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 238 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

50-4-34. Request for access to social networking account prohibited.

A. It is unlawful for an employer to request or require a prospective employee to provide a password in order to gain access to the prospective employee's account or profile on a social networking web site or to demand access in any manner to a prospective employee's account or profile on a social networking web site.

B. Nothing in this section shall limit an employer's right to:

(1) have policies regarding work place internet use, social networking site use and electronic mail use; and

(2) monitor usage of the employer's electronic equipment and the employer's electronic mail without requesting or requiring a prospective employee to provide a password in order to gain access to the prospective employee's account or profile on a social networking web site.

C. Nothing in this section shall prohibit an employer from obtaining information about a prospective employee that is in the public domain.

D. Nothing in this section shall apply to a federal, state or local law enforcement agency. Nothing in this section shall prohibit federal, state or local government agencies or departments from conducting background checks as required by law.

E. As used in this section, "social networking web site" means an internet-based service that allows individuals to:

(1) construct a public or semi-public profile within a bounded system created by the service;

(2) create a list of other users with whom they share a connection within the system; and

(3) view and navigate their list of connections and those made by others within the system.

History: Laws 2013, ch. 222, § 1.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 222 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

50-4-35. Labor relations; union security agreements.

A. The purpose of this section is for the state to exercise the limited authority reserved to the states under Section 14(b) of the National Labor Relations Act.

B. An employer or labor organization anywhere in the state may execute and apply an agreement requiring membership in a labor organization as a condition of employment to the full extent allowed by federal law.

C. The state has exclusive jurisdiction to prohibit the negotiation, execution or application of agreements requiring membership in a labor organization as a condition of employment in New Mexico.

D. A city, county, home rule municipality or other political subdivision of the state shall not adopt nor continue in effect any ordinance, rule, regulation, resolution or statute that prohibits the negotiation, execution or application of agreements requiring membership in a labor organization as a condition of employment in New Mexico.

History: Laws 2019, ch. 81, § 1.

ANNOTATIONS

Cross references. — For the National Labor Relations Act, *see* 29 U.S.C.

Effective dates. — Laws 2019, ch. 81 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

50-4-36. Workplace sexual harassment, discrimination and retaliation claims; nondisclosure agreements and certain actions prohibited.

A. A private employer shall not, as a term of employment, require an employee to sign a nondisclosure provision of a settlement agreement relating to a claim of sexual harassment, discrimination or retaliation in the workplace brought by the employee or prevent the employee from disclosing a claim of sexual harassment, discrimination or retaliation occurring in the workplace or at a work-related event coordinated by or through the employer.

B. This section does not prohibit a settlement agreement between an employee or former employee alleging sexual harassment, discrimination or retaliation from containing confidentiality provisions. A confidentiality provision is permitted when:

(1) it relates to the monetary amount of a settlement; or

(2) at the employee's request, it prohibits disclosure of facts that could lead to the identification of the employee.

C. At the sole request of the employee, a settlement agreement subject to this section may contain a confidentiality provision that prevents the disclosure of factual information related to the underlying sexual harassment, discrimination or retaliation

claim. The provisions of this subsection shall not be construed to prevent disclosure of information that is the subject of the confidentiality provision if disclosure is required to be made in a judicial, administrative or other governmental proceeding pursuant to a valid subpoena or other applicable order as otherwise required by law.

D. Except as provided in Subsections B and C of this section, a confidentiality provision in a settlement agreement subject to this section is void and unenforceable as a matter of law.

History: Laws 2020, ch. 16, § 1.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

Applicability. — Laws 2020, ch. 16, § 2 provided that the provisions of Laws 2020, ch. 16, § 1 apply to agreements entered into between a private employer and an employee or former employee on or after May 20, 2020.

ARTICLE 4A
Promoting Financial Independence for Victims of Domestic Abuse Act

50-4A-1. Short title.

This act may be cited as the "Promoting Financial Independence for Victims of Domestic Abuse Act".

History: Laws 2009, ch. 14, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 1 effective July 1, 2009.

50-4A-2. Definitions.

As used in the Promoting Financial Independence for Victims of Domestic Abuse Act:

A. "domestic abuse" has the same meaning as it does in the Family Violence Protection Act [Chapter 40, Article 13 NMSA 1978];

B. "domestic abuse leave" means intermittent paid or unpaid leave time for up to fourteen days in any calendar year, taken by an employee for up to eight hours in one day, to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys' victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee's family member;

C. "employee" means a person who is employed by an employer;

D. "employer" includes a person, a firm, a partnership, an association, a corporation, a receiver or an officer of the court of New Mexico, a state agency, or a unit of local government or a school district;

E. "family member" means a minor child of the employee or a person for whom the employee is a legal guardian;

F. "order of protection" means a court order granted pursuant to the Family Violence Protection Act; and

G. "retaliation" means an adverse action against an employee, including threats, reprisals or discrimination for engaging in the protected activity of taking domestic abuse leave.

History: Laws 2009, ch. 14, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 2 effective July 1, 2009.

50-4A-3. Domestic abuse leave required; retaliation prohibited.

An employer shall grant an employee domestic abuse leave without interfering with, restraining or denying exercise of rights under the Promoting Financial Independence for Victims of Domestic Abuse Act or attempting to do so. Retaliation against an employee for using domestic abuse leave is prohibited.

History: Laws 2009, ch. 14, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 3 effective July 1, 2009.

50-4A-4. Certification; verification.

A. When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give notice to the employer within twenty-four hours of commencing the domestic abuse leave.

B. An employer may require verification of the need for domestic abuse leave, and, if so, an employee shall provide one of the following forms of verification through furnishing in a timely fashion:

(1) a police report indicating that the employee or a family member was a victim of domestic abuse;

(2) a copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the employee and the employee's advocate or attorney; or

(3) the written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse.

History: Laws 2009, ch. 14, § 4.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 4 effective July 1, 2009.

50-4A-5. Impact of domestic abuse leave on other employee benefits.

A. For domestic abuse leave, an employee may use accrued sick leave or other available paid time off, compensatory time or unpaid leave time consistent with the employer's policies.

B. To the extent permitted by law, an employer shall not withhold pay, health coverage insurance or another benefit that has accrued to the employee when an employee takes domestic abuse leave. An employer shall not include time taken for domestic abuse leave in calculating eligibility for benefits.

History: Laws 2009, ch. 14, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 5 effective July 1, 2009.

50-4A-6. Confidentiality.

An employer shall not disclose verification information provided under Subsection B of Section 4 [50-4A-4 NMSA 1978] of the Promoting Financial Independence for Victims of Domestic Abuse Act and shall maintain confidentiality of the fact that the employee or employee's family member was involved in a domestic abuse incident, that the employee requested or obtained domestic abuse leave and that the employee made any written or oral statement about the need for domestic abuse leave. An employer may disclose an employee's information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure or when otherwise required by federal or state law.

History: Laws 2009, ch. 14, § 6.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 6 effective July 1, 2009.

50-4A-7. Enforcement.

A. The workforce solutions department is authorized to enforce the Promoting Financial Independence for Victims of Domestic Abuse Act and to investigate complaints made by persons who claim to be aggrieved pursuant to the provisions of that act.

B. The workforce solutions department and the employee have the right to bring an action in violation of the Promoting Financial Independence for Victims of Domestic Abuse Act in a court of competent jurisdiction to enjoin further violations, recover actual damages sustained or both, together with costs and reasonable attorney fees.

History: Laws 2009, ch. 14, § 7.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 7 effective July 1, 2009.

50-4A-8. Effect on other laws and existing employment benefits.

A. Remedies in this section are provided in addition to other common law, federal or state remedies.

B. Nothing in the Promoting Financial Independence for Victims of Domestic Abuse Act shall supersede any provision of law or contract that provides greater rights than the rights established under that act.

C. The rights provided in the Promoting Financial Independence for Victims of Domestic Abuse Act shall not diminish an employer's obligation to provide greater rights in compliance with another contract, collective bargaining agreement or employment benefit program, policy or plan.

History: Laws 2009, ch. 14, § 8.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 14, § 9 made Laws 2009, ch. 14, § 8 effective July 1, 2009.

ARTICLE 5
Employment of Women (Repealed.)

50-5-1. Repealed.

History: Laws 1933, ch. 148, § 1; 1939, ch. 196, § 1; 1941 Comp., § 57-401; 1953 Comp., § 59-5-1; Laws 1969, ch. 274, § 1; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-1 NMSA 1978, as enacted by Laws 1933, ch. 148, § 1, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-2. Repealed.

History: Laws 1933, ch. 148, § 2; 1939, ch. 196, § 2; 1941 Comp., § 57-402; 1953 Comp., § 59-5-2; Laws 1969, ch. 274, § 2; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-2 NMSA 1978, as enacted by Laws 1933, ch. 148, § 2, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-3. Repealed.

History: Laws 1933, ch. 148, § 3; 1941 Comp., § 57-403; 1953 Comp., § 59-5-3; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-3 NMSA 1978, as enacted by Laws 1933, ch. 148, § 3, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-4. Repealed.

History: Laws 1933, ch. 148, § 4; 1941 Comp., § 57-404; 1953 Comp., § 59-5-; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-4 NMSA 1978, as enacted by Laws 1933, ch. 148, § 4, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-5. Repealed.

History: Laws 1933, ch. 148, § 5; 1939, ch. 196, § 3; 1941 Comp., § 57-405; 1953 Comp., § 59-5-5; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-5 NMSA 1978, as enacted by Laws 1933, ch. 148, § 5, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-6. Repealed.

History: Laws 1933, ch. 148, § 6; 1941 Comp., § 57-406; 1953 Comp., § 59-5-6; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-6 NMSA 1978, as enacted by Laws 1933, ch. 148, § 6, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-7. Repealed.

History: Laws 1933, ch. 148, § 7; 1939, ch. 196, § 4; 1941 Comp., § 57-407; 1953 Comp., § 59-5-7; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-7 NMSA 1978, as enacted by Laws 1933, ch. 148, § 7, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-8. Repealed.

History: Laws 1933, ch. 148, § 8; 1941 Comp., § 57-408; 1953 Comp., § 59-5-8; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-8 NMSA 1978, as enacted by Laws 1933, ch. 148, § 8, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-9. Repealed.

History: Laws 1933, ch. 148, § 9; 1941 Comp., § 57-409; 1953 Comp., § 59-5-9; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-9 NMSA 1978, as enacted by Laws 1933, ch. 148, § 9, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-10. Repealed.

History: Laws 1931, ch. 109, § 1; 1941 Comp., § 57-410; 1953 Comp., § 59-5-10; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-10 NMSA 1978, as enacted by Laws 1931, ch. 109, § 1, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-11. Repealed.

History: Laws 1931, ch. 109, § 2; 1941 Comp., § 57-411; 1953 Comp., § 59-5-11; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-11 NMSA 1978, as enacted by Laws 1931, ch. 109, § 2, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-12. Repealed.

History: Laws 1931, ch. 109, § 3; 1941 Comp., § 57-412; 1953 Comp., § 59-5-12; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-12 NMSA 1978, as enacted by Laws 1931, ch. 109, § 3, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-13. Repealed.

History: Laws 1921, ch. 180, § 3; C.S. 1929, § 80-203; 1941 Comp., § 57-405 note; 1953 Comp., § 59-5-13; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-13 NMSA 1978, as enacted by Laws 1921, ch. 180, § 3, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-14. Repealed.

History: Laws 1921, ch. 180, § 6; C.S. 1929, § 80-206; 1941 Comp., § 57-405 note; 1953 Comp., § 59-5-14; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-14 NMSA 1978, as enacted by Laws 1921, ch. 180, § 6, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-15. Repealed.

History: Laws 1921, ch. 180, § 8; C.S. 1929, § 80-208; 1941 Comp., § 57-405 note; 1953 Comp., § 59-5-15; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-15 NMSA 1978, as enacted by Laws 1921, ch. 180, § 8, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-16. Repealed.

History: Laws 1921, ch. 180, § 9; C.S. 1929, § 80-209; 1941 Comp., § 57-405 note; 1953 Comp., § 59-5-16; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-16 NMSA 1978, as enacted by Laws 1921, ch. 180, § 9, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

50-5-17. Repealed.

History: Laws 1921, ch. 180, § 10; C.S. 1929, § 80-210; 1941 Comp., § 57-405 note; 1953 Comp., § 59-5-17; repealed by Laws 2009, ch. 160, § 1.

ANNOTATIONS

Repeals. — Laws 2009, ch. 160, § 1, repealed 50-5-17 NMSA 1978, as enacted by Laws 1921, ch. 180, § 10, relating to the employment of women, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

ARTICLE 6
Employment of Children

50-6-1. Children under fourteen; employment prohibited.

No child under fourteen years of age shall be employed or permitted to labor at any gainful occupation unless otherwise provided for in the Child Labor Act [Chapter 50, Article 6 NMSA 1978].

History: Laws 1925, ch. 79, § 1; C.S. 1929, § 80-106; 1941 Comp., § 57-501; 1953 Comp., § 59-6-1; Laws 1973, ch. 115, § 1; 2007, ch. 257, § 4.

ANNOTATIONS

Cross references. — For children over age twelve permitted to sell or deliver newspapers, *see* 50-6-16 NMSA 1978.

For constitutional provision regarding child labor, *see* N.M. Const., art. XX, § 10.

The 2007 amendment, effective June 15, 2007, provides that the Child Labor Act controls the employment of children under the age of fourteen years.

When employment permitted. — During hours of the day when school is not in session a child under age 14 may be employed if a permit is given therefor pursuant to Section 50-6-7 NMSA 1978, but he may not be employed under any conditions during hours when school is in session. 1944 Op. Att'y Gen. No. 44-4479 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48A Am. Jur. 2d Labor and Labor Relations § 3808 et seq.

Constitutionality of Child Labor Law, 12 A.L.R. 1216, 21 A.L.R. 1437.

Construction and application of Child Labor Law as regards exhibitions or entertainments by children, 72 A.L.R. 141.

What is manufacturing establishment within meaning of child labor laws, 96 A.L.R. 1353.

Constitutionality of statute or ordinance relating to child labor in streets, 152 A.L.R. 579.

Inclusion or exclusion of day of birth in computing one's age, 5 A.L.R.2d 1143.

Nonprofit charitable institutions as within operation of labor statutes, 26 A.L.R.2d 1020.

Liability insurer's duty to defend action as affected by illegal employment of children, 50 A.L.R.2d 487.

Master's liability to servant injured by farm machinery, 67 A.L.R.2d 1120.

Workers' compensation statute as barring illegally employed minor's tort action, 77 A.L.R.4th 844.

43 C.J.S. Infants § 99.

50-6-1.1. Short title.

Chapter 50, Article 6 NMSA 1978 may be cited as the "Child Labor Act".

History: Laws 2007, ch. 257, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

50-6-2. Work permit for children fourteen to sixteen.

A child over the age of fourteen years and under the age of sixteen years shall not be employed or permitted to labor at any gainful occupation without procuring and filing a work permit unless otherwise provided for in the Child Labor Act.

History: Laws 1925, ch. 79, § 2; C.S. 1929, § 80-107; 1941 Comp., § 57-502; 1953 Comp., § 59-6-2; Laws 1973, ch. 115, § 2; 2007, ch. 257, § 5.

ANNOTATIONS

Cross references. — For the issuance of work permits, *see* 50-6-7 NMSA 1978.

The 2007 amendment, effective June 15, 2007, provided that children between fourteen and sixteen years of age cannot be employed without a permit.

The Workers' Compensation Act covers adults and minors of the age of sixteen and over. *Benson v. Export Equip. Corp.*, 1945-NMSC-044, 49 N.M. 356, 164 P.2d 380.

Exclusive remedy provided by Workers' Compensation Act. — The Workers' Compensation Act (Section 52-1-1 NMSA 1978 et seq.) provides an exclusive remedy so that no right of action for injuries exists under the common law where a minor who was legally employed before reaching sixteen years of age was injured after reaching that age when provisions of the Workers' Compensation Act were applicable to him. *Benson v. Export Equip. Corp.*, 1945-NMSC-044, 49 N.M. 356, 164 P.2d 380; *Boyd v. Permian Servicing Co., Inc.*, 1992-NMSC-013, 113 N.M. 321, 825 P.2d 611.

Workers' Compensation Act does not apply when minor illegally employed. — The Workers' Compensation Act (Section 52-1-1 NMSA 1978 et seq.) contains no specific language bringing illegally employed minors within its terms, and so an illegally employed minor may pursue a common-law action against his employer for injuries sustained during such employment. *Maynerich v. Little Bear Enters., Inc.*, 1971-NMCA-079, 82 N.M. 650, 485 P.2d 984.

Employment contract of a illegally employed minor is at least voidable, giving that minor employee the right to pursue a common-law action against the employer if the minor is injured in the employment. *Howie v. Stevens*, 1984-NMCA-052, 102 N.M. 300, 694 P.2d 1365, cert. quashed, 102 N.M 293, 694 P.2d 1358 (1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Infants § 99.

50-6-3. Maximum hours for children fourteen to sixteen.

A. Children over the age of fourteen and under the age of sixteen years shall not be employed or permitted to labor at any gainful occupation for more than forty hours in any one week nor more than eight hours in any one day when school is not in session unless otherwise provided for in the Child Labor Act.

B. Children over the age of fourteen or under the age of sixteen shall not be employed unless otherwise provided for in the Child Labor Act:

(1) before 7:00 a.m. or after 7:00 p.m. during the calendar school year;

(2) before 7:00 a.m. or after 9:00 p.m. outside of the calendar school year;

(3) during school hours, except as provided for in work experience and career exploration programs;

(4) more than three hours per day during school days; or

(5) more than eighteen hours per week during school weeks.

History: Laws 1925, ch. 79, § 3; C.S. 1929, § 80-108; 1941 Comp., § 57-503; 1953 Comp., § 59-6-3; Laws 1973, ch. 115, § 3; 2007, ch. 257, § 6.

ANNOTATIONS

Cross references. — For children over age twelve permitted to sell or deliver newspapers, *see* 50-6-16 NMSA 1978.

The 2007 amendment, effective June 15, 2007, provided that children between fourteen and sixteen may not be employed for more than forty hours per week or eight hours in a day when school is not in session and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality of statute limiting hours of labor of children in private industry, 90 A.L.R. 815.

43 C.J.S. Infants § 99; 51B C.J.S. Labor Relations §§ 1021, 1043.

50-6-4. Prohibited occupations for children under sixteen; exceptions.

A. A child under the age of sixteen years shall not be employed or permitted to labor at any of the following occupations or in any of the following positions:

(1) on or around belted machines while in motion;

(2) on or around power-driven woodworking machines used for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, processing or printing wood or veneer;

(3) on or around power-driven hoisting apparatus with the exception that this section shall not prohibit the operation of an automatic elevator that is controlled by pushbuttons making leveling, holding, opening and closing of the car and hoistway doors entirely automatic;

(4) in or about plants, establishments or jobs using, manufacturing or storing explosives or articles containing explosive components;

(5) electronics jobs where the child is exposed to electrical hazards;

(6) in or about any establishment where malt or alcoholic beverages are manufactured, packed, wrapped or bottled;

(7) municipal firefighting whether using volunteers or paid employees;

(8) manufacture of goods for immoral purposes;

(9) in any employment dangerous to lives and limbs or injurious to the health or morals of children under the age of sixteen years; or

(10) soliciting door-to-door for other than a nonprofit organization or in other activities approved by the parent or guardian.

B. The provisions of this section do not apply to:

(1) children engaged in working with equipment in any school or place where cooperative education or science is taught while under supervision of an instructor;

(2) apprentices while under the supervision of a journeyman in a certified apprenticeship program; or

(3) children employed in a film or television production, where the set may be considered physically hazardous or special effects are used; provided that a New Mexico-certified trainer or technician accredited in a United States department of labor occupational safety and health administration-certified safety program specific to the film or television industry is present at all times that the child is exposed to the potentially hazardous condition.

C. Additional hazardous occupations not specifically listed in this section shall be determined by the state child labor inspector following consultation with the employer who wishes to employ minors over the age of fourteen years and under sixteen years of age.

History: Laws 1925, ch. 79, § 5; C.S. 1929, § 80-110; 1941 Comp., § 57-505; Laws 1943, ch. 112, § 1; 1953 Comp., § 59-6-5; Laws 1973, ch. 115, § 4; 2007, ch. 257, § 7.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, added Paragraph (10) of Subsection A; provided that this section does not apply to children in cooperative education or to apprentices; and added Paragraph (3) of Subsection B, relating to children employed in film or television productions.

Common-law remedy for illegally employed minor. — The Workers' Compensation Act (Section 52-1-1 NMSA 1978 et seq.) contains no specific language bringing illegally employed minors within its terms, and so an illegally employed minor may pursue a common law action against his employer for injuries sustained during such employment. *Maynerich v. Little Bear Enters., Inc.*, 1971-NMCA-079, 82 N.M. 650, 485 P.2d 984.

Employment in violation of federal law still governed by Worker's Compensation Act. — Suit for wrongful death of 16-year-old who died from injuries incurred while working for employer was barred because the case was governed by the Worker's Compensation Act, despite the fact that the employment of the child was in violation of the Fair Labor Standards Act. The legislature's legalization of employment for 16-year-old workers in this section reflects an intent that the exclusivity of the Worker's Compensation Act apply to such employment. *Boyd v. Permian Servicing Co.*, 1992-NMSC-013, 113 N.M. 321, 825 P.2d 611.

50-6-5. Prohibited occupations for children under eighteen.

No child under the age of eighteen years shall be employed or permitted to labor in any mine or quarry underground or at or about any place where explosives are used. However, children under the age of eighteen years but not under the age of fourteen years may be employed to separate mica if blasting is done during periods when there is nobody working, and the mica is subsequently removed from the blasting area to another site for operation.

History: Laws 1925, ch. 79, § 6; C.S. 1929, § 80-111; 1941 Comp., § 57-506; 1953 Comp., § 59-6-6; Laws 1973, ch. 115, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Infants § 99.

50-6-6. Repealed.

History: Laws 1925, ch. 79, § 7; C.S. 1929, § 80-112; 1941 Comp., § 57-507; Laws 1943, ch. 112, § 2; 1953 Comp., § 59-6-7; Laws 1973, ch. 115, § 6; repealed by Laws 2007, ch. 257, § 16.

ANNOTATIONS

Repeals. — Laws 2007, ch. 257, § 16 repealed 50-6-6 NMSA 1978, as enacted by Laws 1925, ch. 79, § 7, relating to messengers under 16 years of age, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

50-6-7. Work permit; issuance; authorized officials; application; contents; proof; copies; maximum term.

A. Work permits shall be issued only by the school superintendents, school principals, designated issuing school officers or the director of the labor and industrial division of the labor department or the director's designee.

B. A work permit shall not be issued to a child until satisfactory proof has been furnished that the work in which the child is to engage is not dangerous to the child or injurious to the child's health or morals.

C. The application for the work permit shall show that the work to be performed would not result in injury to the health, morals or mental development of the child. Satisfactory proof of the age of the child at the date of the application shall be furnished. Any application for the employment of children at any gainful occupation during the session hours of the school of the district in which the child resides shall set forth, in addition to the foregoing, the necessity to the family or the dependents of the child or for the child's own support of the income to be derived from the employment or labor.

D. Whenever the person authorized to issue the work permit is satisfied that the provisions of this section have been complied with, the person shall issue to the child a work permit, keeping one copy on file and sending one copy of the permit to the labor and industrial division of the labor department.

E. No work permit shall be in force without renewal for a longer period than one year from the date of issuance.

History: Laws 1925, ch. 79, § 8; C.S. 1929, § 80-113; 1941 Comp., § 57-508; Laws 1943, ch. 112, § 3; 1953 Comp., § 59-6-8; Laws 1963, ch. 175, § 1; 1973, ch. 115, § 7; 1989, ch. 49, § 2; 2007, ch. 257, § 8.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed "permit certificate" to "work permit".

The 1989 amendment, effective June 16, 1989, in Subsection A substituted the comma following "principals" for "or" and added all of the language following "officers".

50-6-8. Renewal of work permits.

The officer authorized to issue work permits may renew a work permit at the expiration date thereof for a period not exceeding one year upon a satisfactory showing upon the part of the child, the child's parent, guardian or custodian that the provisions of the Child Labor Act are being complied with and that the child is in good health. The extension of time shall be made by the officer writing upon the certificate the following words: "this work permit is extended for a period of ..... days from this date" and by the officer signing the certificate.

History: Laws 1925, ch. 79, § 9; C.S. 1929, § 80-114; 1941 Comp., § 57-509; 1953 Comp., § 59-6-9; Laws 1973, ch. 115, § 8; 2007, ch. 257, § 9.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed "labor permit" to "work permit".

50-6-9. Employer's records; form of permits.

Whenever any child is employed or permitted to labor at any gainful occupation permitted by the laws of this state, the employer of the child shall preserve on file the work permit of the child and shall keep posted in a conspicuous place about the premises where the child is employed a list of all children there at work by virtue of work permits. The form for all work permits shall be prepared by and shall contain such information concerning the identity of the child as may be prescribed by the labor and industrial division of the labor department.

History: Laws 1925, ch. 79, § 10; C.S. 1929, § 80-115; 1941 Comp., § 57-510; 1953 Comp., § 59-6-10; Laws 1973, ch. 115, § 9; 2007, ch. 257, § 10.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed "labor permit" to "work permit".

50-6-10. Inspection of work permits, records and premises by the labor and industrial division of the labor department.

All work permits and records and the premises where children are employed are subject to inspection by representatives of the labor and industrial division of the labor department. The director of the division may, for cause, cancel a work permit with the concurrence of the officer issuing the permit but, in case they disagree, the district court may cancel the permit on complaint setting forth the grounds therefor under the provisions of the Child Labor Act.

History: Laws 1925, ch. 79, § 11; C.S. 1929, § 80-116; 1941 Comp., § 57-511; 1953 Comp., § 59-6-11; Laws 1963, ch. 175, § 2; 1973, ch. 115, § 10; 2007, ch. 257, § 11.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed "labor permit" to "work permit".

50-6-11. [Habitual presence of child under sixteen at a place of work during school hours; prima facie evidence of employment.]

The frequent presence of any child under sixteen years of age, during school hours, at any place where workers are at work more or less habitually shall be prima facie evidence that such child is unlawfully engaged in labor, if no permit is exhibited.

History: Laws 1925, ch. 79, § 12; C.S. 1929, § 80-117; 1941 Comp., § 57-512; 1953 Comp., § 59-6-12.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 16 C.J.S. Constitutional Law § 124 et seq.

50-6-12. Penalties.

A. A person who employs a child, or who is the parent, guardian or custodian of a child, and who permits that child to be employed in violation of any of the provisions of the Child Labor Act is guilty of a petty misdemeanor. Each violation of the Child Labor Act constitutes a separate offense. A second or subsequent conviction of an employer, parent, guardian or custodian for violation of the Child Labor Act is a misdemeanor.

B. The director of the labor and industrial division of the labor department may report a violation of the Child Labor Act to the local district attorney, who may prosecute the alleged violator.

History: Laws 1925, ch. 79, § 13; C.S. 1929, § 80-118; 1941 Comp., § 57-513; 1953 Comp., § 59-6-13; Laws 1973, ch. 115, § 11; 2007, ch. 257, § 12.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, provided that a person who employs a child or a parent, guardian or custodian who permits a child to be employed in violation of the Child Labor Act is guilty of a petty misdemeanor; that each violation is a separate offense; and that a second or subsequent conviction is a misdemeanor; and added Subparagraph B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Infants § 100.

50-6-13. District court jurisdiction.

The district courts are hereby given original jurisdiction in all cases of violations of the provisions of the Child Labor Act.

History: Laws 1925, ch. 79, § 14; C.S. 1929, § 80-119; 1941 Comp., § 57-514; 1953 Comp., § 59-6-14; 2007, ch. 257, § 13.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed the reference to the act.

50-6-14. State child labor inspector; appointment; direction; qualifications.

There shall be a "state child labor inspector", appointed by and subject to the director of the labor and industrial division of the labor department. The inspector must be qualified by special training and experience for this work and must pass a satisfactory examination given by the director of the labor and industrial division of the labor department.

History: Laws 1925, ch. 79, § 15; C.S. 1929, § 80-120; 1941 Comp., § 57-515; 1953 Comp., § 59-6-15; Laws 1963, ch. 175, § 3; 2007, ch. 257, § 14.

ANNOTATIONS

Compiler's notes. — Laws 1987, ch. 342, § 33 provided that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

The 2007 amendment, effective June 15, 2007, provided that the inspector shall be appointed by the director of the labor and industrial division and must be qualified by special training and experience for the work and pass an examination given by the director.

50-6-15. Repealed.

History: 1953 Comp., § 59-6-15.1, enacted by Laws 1963, ch. 175, § 4; repealed by Laws 2007, ch. 257, § 16.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 and Laws 2007, ch. 257, § 16 repealed 50-6-15 NMSA 1978, as enacted by Laws 1963, ch. 175, § 4, relating to the transfer of records of the former deputy of public welfare, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

50-6-16. Repealed.

History: 1953 Comp., § 59-6-16, enacted by Laws 1959, ch. 298, § 1; repealed by Laws 2007, ch. 200, § 24 and Laws 2007, ch. 257, § 16.

ANNOTATIONS

Repeals. — Laws 2007, ch. 257, § 16 repealed 50-6-16 NMSA 1978, as enacted by Laws 1959, ch. 298, § 1, relating to the sale of newspapers by children over the age of twelve, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

50-6-17. Exceptions.

A. A child under the age of sixteen may be employed without obtaining a work permit and without the restrictions on the age of the child or time of employment imposed by Sections 50-6-1 through 50-6-3 NMSA 1978 if the child is employed:

(1) by a parent in an occupation other than manufacturing or mining or other than an occupation found to be particularly hazardous or detrimental to the health of children under the age of sixteen;

(2) as an actor or performer in motion picture, theatrical, radio or television productions; or

(3) to sell or deliver newspapers, with the parent's consent, during the school term or during vacation and the child is attending school as required by law and does not engage in such employment except at times when the child's presence is not required at school.

B. The employer of a child employed pursuant to Subsection A of this section is not required to obtain and preserve a work permit in accordance with Section 50-6-9 NMSA 1978 for that child.

History: Laws 2007, ch. 257, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

50-6-18. Children working in the performing arts.

A. For the purposes of this section, a "performer" means a person employed to act or otherwise participate in the performing arts, including motion picture, theatrical, radio or television products.

B. A performer under eighteen years of age is considered a child subject to the Child Labor Act unless:

(1) the performer has satisfied the compulsory education laws of the state;

(2) the performer is married;

(3) the performer is a member of the armed forces; or

(4) the performer is legally emancipated.

C. A child may not begin work earlier than 5:00 a.m. and the workday must end no later than 10:00 p.m. on evenings preceding school days and 12:00 a.m. on mornings of nonschool days.

D. A child-performer's working hours, including school time, are limited as follows:

(1) a child under the age of six shall not be employed or permitted to labor for more than six hours in one day;

(2) a child over the age of six and under the age of nine shall not be employed or permitted to labor for more than eight hours in one day;

(3) a child over the age of nine and under the age of sixteen shall not be employed or permitted to labor for more than nine hours in one day; and

(4) a child over the age of sixteen and under the age of eighteen shall not be employed or permitted to labor for more than ten hours in one day.

E. If a child engages in employment on school days, a teacher with credentials appropriate to the level of education needed shall be provided by the employer.

F. The labor department shall promulgate rules for employers in the performing arts, including education and safety requirements.

History: Laws 2007, ch. 257, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

50-6-19. Children employed in the performing arts; trust account; requirements.

A. Whenever a child is employed in the performing arts, the child's parent, guardian or trustee shall establish a trust account in the child's state of residence for the benefit of the child within seven business days after the child's employment contract is signed, and the employer shall deposit fifteen percent of the child's gross earnings directly into the child's trust account.

B. The money placed in trust shall not be accessed until the child is eighteen years of age or becomes legally emancipated, unless otherwise ordered by the district court.

C. The parent, guardian or trustee shall provide the child's employer with a trustee statement within fifteen days after the start of employment. Upon the presentation of the trustee statement, the employer shall provide the parent, guardian or trustee with a written acknowledgment of receipt of the statement.

D. If the parent, guardian or trustee fails to provide the child's employer with a trustee statement within ninety days after the start of employment, the child's employer shall refer the matter to the district court and a trustee shall be appointed for the child.

E. The child's employer shall deposit fifteen percent of the child's gross earnings into the child's trust account within fifteen business days of services rendered. If the account is not established, the child's employer shall withhold fifteen percent until a trust account is established for the child's benefit.

F. Once the child's employer deposits fifteen percent of the child's gross earnings in trust, the child's employer shall have no further obligation or duty to monitor the funds.

G. The trustee shall be the only individual with an obligation to monitor and account for the funds, in compliance with state law.

H. The district court shall have continuing jurisdiction over the trust and may at any time, upon petition of the parent, guardian, trustee or child, order that the trust be terminated or amended for good cause. An order amending or terminating the trust shall be made only after reasonable notice and the opportunity for all parties to appear and be heard have been given.

I. This section applies only to contracts in an amount equal to or greater than one thousand dollars ($1,000) in gross earnings.

J. For the purposes of this section, "gross earnings" means the total compensation payable to the child under the contract or, if the child's services are being rendered through a third party, the compensation payable to that third party for the services of the child.

History: Laws 2007, ch. 257, § 15.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

ARTICLE 7
Apprenticeship

50-7-1. Declaration of policy.

It is declared to be the policy of this act [50-7-1 to 50-7-4, 50-7-7 NMSA 1978]: to encourage the development of an apprenticeship system through the voluntary cooperation of management and labor and interested state agencies, and in cooperation with other states and the federal government; to provide for the establishment and furtherance of standards of apprenticeship to safeguard the welfare of apprentices; and to aid in the maintenance of an adequate skilled labor force.

History: 1953 Comp., § 59-7-13, enacted by Laws 1957, ch. 219, § 1.

ANNOTATIONS

Cross references. — For apprenticeship council, *see* 50-7-3 NMSA 1978.

Generally. — If a contractor voluntarily abides and complies with the provisions of this act or is a party to a valid apprenticeship contract the apprentice is entitled to the minimum wages for apprentices on public works, as provided by Section 13-4-11 NMSA 1978. 1955 Op. Att'y Gen. No. 55-6244.

In cases where a person is employed under theory of apprenticeship either under this statute or otherwise, and the employer does not comply with the indenture, educational training and other features of the apprenticeship law, then he is in violation thereof and the employee so misclassified has the right to demand the predetermined wages of Section 13-4-11 NMSA 1978 as a journeyman in that trade. 1955 Op. Att'y Gen. No. 55-6244.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27 Am. Jur. 2d Employment Relationship §§ 50, 51.

6 C.J.S. Apprentices §§ 1 to 11.

50-7-2. Definitions.

As used in this act [50-7-1 to 50-7-4, 50-7-7 NMSA 1978]: "apprentice" means a person at least sixteen years old who is covered by a written agreement with an employer, or with an association of employers or employees acting as agent for an employer, and approved by the state apprenticeship council, which apprentice agreement provides for not less than two thousand hours required for any given trade by reasonably continuous employment for such person, for his participation in an approved schedule of work experience through employment and for at least one hundred forty-four hours per year of related supplemental instruction.

History: 1953 Comp., § 59-7-14, enacted by Laws 1957, ch. 219, § 2; 1978, ch. 134, § 1.

50-7-3. Apprenticeship council.

An "apprenticeship council", hereinafter referred to as the council, shall be appointed by the director of the labor and industrial division of the department of labor without regard to any other provisions of law regarding the appointment and compensation of employees of the state. It shall consist of three persons known to represent employers, three persons known to represent labor organizations, three public representatives and shall include, as ex-officio members without vote, the director of the labor and industrial division and the state supervisor of trade and industrial education. Persons appointed to the council must be familiar with apprenticeable occupations. The terms of office of the members of the council first appointed shall expire as designated by the director at the time of making the appointment: one representative each of employers, labor organizations and the public being appointed for one year; one representative each of employers, labor organizations and the public being appointed for two years and one representative each of employers, labor organizations and the public being appointed for three years. Thereafter, each member shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of that term. Members of the council not otherwise compensated by public money shall be reimbursed for their official duties in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for attendance at not in excess of twelve meetings per year.

History: 1953 Comp., § 59-7-15, enacted by Laws 1957, ch. 219, § 3; 1977, ch. 252, § 28; 1978, ch. 134, § 2; 1979, ch. 204, § 11; 1991, ch. 198, § 1.

ANNOTATIONS

Cross references. — For the Public Works Apprenticeship and Training Act, *see* 13-4D-1 NMSA 1978 et seq.

For the Apprenticeship Assistance Act, *see* 21-19A-1 NMSA 1978 et seq.

The 1991 amendment, effective June 14, 1991, in the first sentence, substituted "director of the labor and industrial division of the department of labor" and "director of the labor and industrial division" for "commissioner of labor" in two places and substituted "labor organizations, three public representatives" for "employees, two public representatives" and rewrote the fourth sentence which read "The terms of office of the members of the council first appointed shall expire as designated by the commissioner at the time of making the appointment: One representative each of employers, employees and the public being appointed for one year; one representative each of employers, employees and the public being appointed for two years; and one representative each of employers, and employees for three years".

Legislative intent to compensate. — The legislature intended to limit the individuals "not otherwise compensated by public money" to those who are members of the council as a direct result of their particular public office and not those members of the council who are public servants serving the council on a voluntary basis. 1964 Op. Att'y Gen. No. 64-99.

University professor compensable council member. — Since a university professor is not a member of the council as a direct result of his position with the state, he is not already compensated by public money for his services as a member of the council and he may be paid necessary traveling and other expenses while engaged in the performance of his duties to the same extent as prescribed by law for officials of the state. 1964 Op. Att'y Gen. No. 64-99.

50-7-4. Duties of the council.

The council shall formulate standards to safeguard the welfare of apprentices, giving consideration to standards advocated by the bureau of apprenticeship of the United States department of labor, and shall formulate such additional policies as may be necessary to carry out the intent and purposes of the act [50-7-1 to 50-7-4, 50-7-7 NMSA 1978]. The council shall prescribe its own rules of procedure.

History: 1953 Comp., § 59-7-16, enacted by Laws 1957, ch. 219, § 4.

ANNOTATIONS

Functions of apprenticeship council. — The primary function of the apprenticeship council is to encourage the development and operation of apprenticeship programs which meet acceptable standards as to quality and content. Council may enter into contracts with the U.S. department of labor under which it would undertake to promote on-the-job training programs in the development and establishment of such training

programs, and in providing advisory and technical assistance to businesses which undertake to establish on-the-job training programs and other programs of that nature. 1966 Op. Att'y Gen. No. 66-140.

No authority to operate programs. — This agency only has powers to establish standards and policies concerning the carrying on and encouraging of apprenticeship programs. The council under this statute does not have authority to actually engage in the operation of an apprenticeship program. To the extent that the apprenticeship council intends to enter into contracts with the U.S. department of labor under which it would agree to operate an on-the-job training project itself, such contracts would not be proper. 1966 Op. Att'y Gen. No. 66-140.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 6 C.J.S. Apprentices § 11.

50-7-4.1. Administration.

The commissioner of labor shall appoint a director of apprenticeship to be responsible for effectuating the policies set forth in Section 50-7-1 NMSA 1978, to carry out the policies approved by the apprenticeship council and otherwise to execute the provisions of Chapter 50, Article 7 NMSA 1978. Such appointment shall be subject to confirmation by a majority vote of the council. The commissioner of labor shall appoint the director and such additional personnel as may be necessary, subject to such laws and practices as are applicable to appointment, service and compensation of employees of the state.

Under the general direction of the commissioner of labor, the director in furtherance of the duties specified shall:

A. encourage the voluntary participation of employers and employees in the furtherance of the objectives of Chapter 50, Article 7 NMSA 1978;

B. devise necessary procedures and records;

C. prepare statistical reports regarding apprenticeship;

D. issue information related to apprenticeship; and

E. perform such other duties as are necessary to carry out the intent of Chapter 50, Article 7 NMSA 1978.

History: 1978 Comp., § 50-7-4.1, enacted by Laws 1979, ch. 204, § 12.

ANNOTATIONS

Compiler's notes. — Laws 1987, ch. 342, § 33 provides that all references in law to the "labor commissioner" shall be construed as references to the "director of the labor and industrial division of the department of labor".

Laws 2007, ch. 200 repealed the labor department. Section 9-26-15 NMSA 1978 provides that all statutory references to the "labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department".

50-7-5, 50-7-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 204, § 15, repealed 50-7-5 and 50-7-6 NMSA 1978, relating to the exclusion of the apprenticeship council from the authority of the commissioner of labor and to the administration of the apprenticeship program. For present provisions, *see* 50-7-4.1 NMSA 1978.

50-7-7. Limitation.

A. This act [50-7-1 to 50-7-4, 50-7-7 NMSA 1978] does not apply to employers who, with their employees, are subject to the Railway Labor Act of congress or any act amendatory thereof.

B. The provisions of this act shall apply only to such persons, firms, political subdivisions, corporations, employer associations or organizations of employees as voluntarily elect to conform with its provisions, so long as they shall wish it to apply.

C. Notwithstanding any provision of this act the administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences and the selection and training of teachers for such instruction is the responsibility of state or local boards responsible for vocational education, unless otherwise approved by the state council.

History: 1953 Comp., § 59-7-18, enacted by Laws 1957, ch. 219, § 6.

ANNOTATIONS

Cross references. — For the federal Railway Labor Act, *see* 15 U.S.C. §§ 21, 45; 18 U.S.C. § 373; 28 U.S.C. §§ 1291 to 1294 and 45 U.S.C. §§ 151 to 163, 181 to 188.

ARTICLE 8
National Employment System

50-8-1. [Acceptance of federal act.]

The state of New Mexico hereby accepts the provisions of the act of congress approved June 6, 1933, entitled:

"An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes."

History: Laws 1934 (S.S.), ch. 15, § 1; 1941 Comp., § 57-601; 1953 Comp., § 59-8-1.

ANNOTATIONS

Cross references. — For the federal act referred to in this section, *see* 29 U.S.C. §§ 49 to 49c and 49d to 49k.

50-8-2. Agency of state for purpose of federal act.

The employment security department is hereby designated and constituted the agency of the state of New Mexico for the purpose of such act, with full power to establish such public employment offices throughout the state of New Mexico as it may deem necessary to fully carry out the purposes, to employ such agents, clerks and employees as are necessary therefor, with full power to cooperate with all authorities of the United States having powers or duties under said act of congress and to do and perform all things necessary to secure to this state the benefits of said act in the promotion and maintenance of a system of public employment offices. All funds made available to this state under said act of congress shall, upon receipt thereof, be paid into the general fund of the state treasury and are hereby appropriated therefrom to be expended by the department as provided by the act of congress and by this act [50-8-1, 50-8-2 NMSA 1978].

History: Laws 1934 (S.S.), ch. 15, § 2; 1941 Comp., § 57-602; 1953 Comp., § 59-8-2; Laws 1977, ch. 252, § 31; 1979, ch. 280, § 10.

ANNOTATIONS

Cross references. — For the federal act referred to in this section, *see* 29 U.S.C. §§ 49 to 49c and 49d to 49k.

ARTICLE 9
Occupational Health and Safety

50-9-1. Short title.

Sections 50-9-1 through 50-9-25 NMSA 1978 may be cited as the "Occupational Health and Safety Act".

History: 1953 Comp., § 59-14-1, enacted by Laws 1972, ch. 63, § 1; 1975, ch. 290, § 1; 1993, ch. 322, § 1.

ANNOTATIONS

Cross references. — For Occupational Disease Disablement Law, *see* 52-3-1 NMSA 1978 et seq.

The 1993 amendment, effective April 8, 1993, substituted "50-9-1 through 50-9-25 NMSA 1978" for "59-14-1 through 59-14-24 NMSA 1953".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 131 et seq.

Violation of OSHA regulation as affecting tort liability, 79 A.L.R.3d 962.

Liability of employer with regard to inherently dangerous work for injuries to employees of independent contractor, 34 A.L.R.4th 914.

Duty and liability of subcontractor to employee of another contractor using equipment or apparatus of former, 55 A.L.R.4th 725.

Tort liability for window washer's injury or death, 69 A.L.R.4th 207.

What constitutes "substantial evidence" within meaning of § 6(f) of the Occupational Safety and Health Act (29 U.S.C.S. § 655(f)) providing that the secretary of labor's determinations shall be conclusive if supported by substantial evidence in the record considered as a whole, 25 A.L.R. Fed. 150.

OSHA violation by employer or third party as providing cause of action for employee, 35 A.L.R. Fed. 461.

United States' tort liability for nonenforcement of OSHA, 35 A.L.R. Fed. 963.

Machinery and machine guarding OSHA general industry standards (29 CFR §§ 1910.211 - 1910.222), 38 A.L.R. Fed. 507.

Validity, construction, and application of personal protective equipment subpart of OSHA general industry standards (29 CFR §§ 1910.132 - 1910.140), 39 A.L.R. Fed. 141.

Pre-emptive effect of Occupational Safety and Health Act of 1970 (29 USCS §§ 651 - 678) and standards issued thereunder, 88 A.L.R. Fed. 833.

When has employer "repeatedly" violated Occupational Safety and Health Act within meaning of § 17(a) of Act (29 USCA § 666(a)), 151 A.L.R. Fed. 1

Who is "employer" for purposes of Occupational Safety and Health Act (29 USCA §§ 651 et seq.), 153 A.L.R. Fed. 303.

What constitutes "willful" violation for purposes of §§ 17(a) or (e) of Occupational Safety and Health Act of 1970 (29 U.S.C.A. § 666(a) or § 666(e)), 161 A.L.R. Fed. 561.

51 C.J.S. Labor Relations §§ 11, 12; 30 C.J.S. Employers' Liability § 52 et seq.

50-9-2. Purpose.

It is the purpose of the Occupational Health and Safety Act [50-9-1 NMSA 1978] to assure every employee safe and healthful working conditions by providing for:

A. the establishment of occupational health and safety regulations applicable to places of employment in this state;

B. the effective enforcement of the health and safety regulations;

C. education and training programs for employers and employees in recognition of their responsibilities under the Occupational Health and Safety Act and advice and assistance to them about effective means of preventing occupational injuries and illnesses; and

D. appropriate job-related accident and illness reporting procedures that will help achieve the objectives of the Occupational Health and Safety Act.

History: 1953 Comp., § 59-14-2, enacted by Laws 1972, ch. 63, § 2; 1993, ch. 322, § 2.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "employee" for "working man and woman" in the introductory paragraph.

The coverage of the Occupational Health and Safety Act includes the hazard of third-party violence against employees. *N.M. Petroleum Marketers Assn. v. N.M. Envtl. Improvement Bd.*, 2007-NMCA-060, 141 N.M. 678, 160 P.3d 587.

50-9-2.1. Legislative findings.

The legislature finds that:

A. the proliferation of hazardous chemicals in the environment poses a growing threat to the public health, safety and welfare; and

B. it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in places of employment and to provide a procedure whereby employees may gain access to this information.

History: Laws 1987, ch. 178, § 1.

50-9-3. Definitions.

As used in the Occupational Health and Safety Act:

A. "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency or any other legal entity or their legal representatives, agents or assigns;

B. "employee" means an individual who is employed by an employer, but does not include a domestic employee or a volunteer nonsalaried firefighter;

C. "employer" means any person who has one or more employees, but does not include the United States;

D. "board" means the environmental improvement board;

E. "department" means the department of environment;

F. "place of employment" means any place, area or environment in or about which an employee is required or permitted to work;

G. "commission" means the occupational health and safety review commission established under the Occupational Health and Safety Act;

H. "chemical" means any element, chemical compound or mixture of elements or compounds;

I. "hazardous chemical" means any chemical or combination of chemicals that has been labeled hazardous by the chemical manufacturer, importer or distributor in accordance with regulations promulgated by the federal Occupational Safety and Health Act of 1970;

J. "label" means any written, printed or graphic material displayed on or affixed to containers of chemicals which identifies the chemical as hazardous;

K. "material safety data sheet" means written or printed material concerning a hazardous chemical that contains information on the identity listed on the label, the chemical and common names of the hazardous ingredients, the physical and health hazards, the primary route of entry, the exposure limits, any generally applicable control measures, any emergency or first aid procedures, the date of preparation and the

name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet;

L. "mobile work site" means any place of employment in standard industrial classification codes 13, oil and gas extraction, and 15 through 17, construction, where work is performed in a different location than the principal office in a fixed location used by the employer; and

M. "secretary" means the secretary of environment.

History: 1953 Comp., § 59-14-3, enacted by Laws 1972, ch. 63, § 3; 1975, ch. 290, § 2; 1977, ch. 253, § 65; 1985, ch. 111, § 1; 1987, ch. 178, § 2; 1993, ch. 322, § 3.

ANNOTATIONS

Cross references. — For the federal Occupational Safety and Health Act of 1970, *see* 29 U.S.C. § 651 et seq.

The 1993 amendment, effective April 8, 1993, deleted former Subsection E, which defined "agency" or "division"; redesignated former Subsections F to M as Subsections E to L; substituted the definition of "department" in current Subsection E for " 'director' means the director of the environmental improvement division"; added current Subsection M; and made minor stylistic changes in Subsections I and K.

The 1987 amendment, effective April 1, 1988, added Subsections I through M.

Prison inmates not "employees". — Notwithstanding the fact that prison industries must comply with occupational health and safety standards, inmates engaged in prison operated industries or enterprises are not "employees" of the penitentiary for purposes of filing an occupational health and safety complaint with the environmental improvement division. 1981 Op. Att'y Gen. No. 81-23.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who is "employer" for purposes of Occupational Safety and Health Act (29 U.S.C.S. § 651 et seq.), 27 A.L.R. Fed. 943 and 153 A.L.R. Fed. 303.

When has employer "repeatedly" violated Occupational Safety and Health Act within meaning of § 17(a) of Act (29 USCA § 666(a)), 151 A.L.R. Fed. 1

What constitutes "willful" violation for purposes of §§ 17(a) or (e) of Occupational Safety and Health Act of 1970 (29 U.S.C.A. § 666(a) or § 666(e)), 161 A.L.R. Fed. 561.

50-9-4. State occupational health and safety agency.

The department is the state occupational health and safety agency for all purposes under federal legislation relating to occupational health and safety and may take all action necessary to secure to this state the benefits of that legislation.

History: 1953 Comp., § 59-14-4, enacted by Laws 1972, ch. 63, § 4; 1993, ch. 322, § 4.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 128 et seq.

50-9-5. Employer and employee duties.

A. Every employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

B. Every employer shall furnish and maintain a place of employment that must comply with the health and safety regulations promulgated by the board. The regulations shall provide for the adoption of practices, means, methods, operations, conditions and processes in order to provide safe and healthful employment and places of employment.

C. Each employer shall, through posting of notices at the place or places where notices to employees are normally posted or other appropriate means, keep his employees informed of their protections and obligations under the Occupational Health and Safety Act, including provisions of applicable regulations.

D. Each employee shall comply with the provisions of the Occupational Health and Safety Act and any rules and orders promulgated pursuant thereto which are applicable to his own actions and conduct in the course of his employment.

History: 1953 Comp., § 59-14-5, enacted by Laws 1972, ch. 63, § 5; 1975, ch. 290, § 3.

ANNOTATIONS

Additional civil actions not allowed. — Nowhere in the Occupational Health and Safety Act or in its legislative history can be found any indication that the legislature intended to allow additional civil actions instituted by aggrieved employees injured through violations of OSHA standards. *Arvas v. Feather's Jewelers*, 1978-NMCA-075, 92 N.M. 89, 582 P.2d 1302.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws §§ 34, 131.

Employer's tort liability to worker for concealing workplace hazard or nature or extent of injury, 9 A.L.R.4th 778.

Employer's liability for injury to babysitter in home or similar premises, 29 A.L.R.4th 304.

Liability of employer with regard to inherently dangerous work for injuries to employees of independent contractor, 34 A.L.R.4th 914.

Employer's liability to employee for failure to provide work environment free from tobacco smoke, 63 A.L.R.4th 1021.

50-9-5.1. Employer duties; hazardous chemicals.

A. All incoming containers labeled as hazardous shall be subject to this section. The employer shall not remove or deface any label which indicates on an incoming container that a chemical is hazardous, unless the container is immediately marked with the required information.

B. Each employer shall obtain and maintain material safety data sheets for each chemical used in his place of employment and labeled as hazardous. Each employer shall ensure that the information on material safety data sheets for hazardous chemicals is readily accessible to employees during each work shift. The board shall promulgate regulations which assure reasonable compliance with this provision at mobile work sites. If a material safety data sheet has not been supplied from the manufacturer, importer or distributor of the hazardous chemical, the employer shall obtain the material safety data sheet by writing the manufacturer, importer or distributor and requesting that he send the material safety data sheet immediately.

C. Each employer shall maintain a current inventory of all chemicals that have been labeled as hazardous in his place of employment.

D. Each employer shall develop and implement a written hazard communication program for his place of employment which describes how the criteria specified for labels and other forms of warning, material safety data sheets and employee information and training will be met and which also includes the following:

(1) a list of the hazardous chemicals known to be present, using an identity that is referenced on the appropriate material safety data sheet. The list may be compiled for the place of employment as a whole or for individual work areas;

(2) the methods the employer will use to inform employees of the hazards of nonroutine tasks, for example, the cleaning of reactor vessels and the hazards associated with chemicals contained in unlabeled pipes in their work areas; and

(3) the methods the employer will use to inform any contract employers whose employees work in the employer's place of business of the hazardous chemicals

their employees may be exposed to while performing their work and any suggestions for appropriate protective measures.

The employer may rely on an existing hazard communication program to comply with these requirements provided that it meets the provisions of this subsection. The employer shall make the written hazard communication program available upon request to employees, their designated representatives and the occupational health and safety bureau of the environmental improvement division of the health and environment department [department of environment].

E. Each employer shall provide employees with information and training on hazardous chemicals they use or may become exposed to during the course of employment.

F. The requirements of Subsection E of this section shall not apply to any hazardous chemical received by an employer in a sealed package or container and subsequently sold or transferred if the seal is maintained.

G. Nothing in this section shall supersede any other requirements in the Occupational Health and Safety Act.

History: 1978 Comp., § 50-9-5.1, enacted by Laws 1987, ch. 178, § 3.

ANNOTATIONS

Bracketed material. — The bracketed reference to the department of environment was inserted by the compiler and is not part of the law. Laws 1991, ch. 25, § 4 established the department of environment and provided that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment.

50-9-6. Training; assistance; consultation; research.

A. The department shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance and prevention of unsafe working conditions in employment and places of employment and consult with, advise and assist employers and employees about effective means of preventing occupational injuries and illnesses.

B. Upon an employer's request, the department shall provide an on-site consultation inspection of conditions and practices of the employer's work place without issuing citations or proposing penalties for violations noted, provided that imminent danger situations found during the on-site consultative visit must be pointed out to the employer. In the event the imminent danger is pointed out by the department consultant but immediate steps are not taken by the employer to eliminate such danger, the

emergency procedures provided in Section 50-9-14 NMSA 1978 shall be pursued by the department to assure timely abatement of the imminent danger situation.

C. The secretary is responsible for programs involving research in occupational health and safety, for surveys and recommendations for occupational health and safety programs and for promotional, educational and advisory activities in occupational health and safety.

D. The board or the secretary may appoint special committees composed of technicians or professionals specializing in occupational health or safety to assist in carrying out the objectives of the Occupational Health and Safety Act [50-9-1 NMSA 1978]. Members of such committees shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1953 Comp., § 59-14-6, enacted by Laws 1972, ch. 63, § 6; 1975, ch. 290, § 4; 1993, ch. 322, § 5.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" near the beginning of Subsection A and throughout Subsection B; made a minor stylistic change near the middle of Subsection A; substituted "50-9-14 NMSA 1978" for "59-14-13 NMSA 1953" in the second sentence of Subsection B; and substituted "secretary" for "director" near the beginning of Subsections C and D.

50-9-7. Duties and powers of the board.

A. The board shall promulgate regulations that are and will continue to be at least as effective as standards promulgated pursuant to the federal Occupational Safety and Health Act of 1970 to prevent or abate detriment to the health and safety of employees. In adopting, amending and repealing its regulations, the board shall provide an opportunity for representatives of employers and employees affected by the regulations to be heard and shall give weight it deems appropriate to all relevant facts and circumstances presented at the public hearing, including but not limited to:

(1) character and degree of injury to or interference with the health and safety of employees proposed to be abated or prevented by the regulation;

(2) technical practicability and economic reasonableness of the regulation and the existence of alternatives to the prevention or abatement of detriment to the health and safety of employees proposed by the regulation; and

(3) the public interest, including the social and economic effects of work-related accidents, injuries and illnesses.

B. In promulgating regulations dealing with toxic materials or harmful physical agents, the board shall provide regulations that most adequately assure to the extent feasible, on the basis of the best available technology, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard dealt with by the regulations for a period of his working life. Whenever practicable, the regulation promulgated shall be expressed in terms of objective criteria and of the performance desired.

C. The regulation shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate, the standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with the hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to the hazards in order to most effectively determine whether the health of the employees is adversely affected by the exposure. Cost of medical examinations for research as ordered by the secretary shall be paid for by the department. Results of examinations shall be made available to the secretary, to the employer and, upon the request of the employee, to the employee's physician. The board may make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring and medical examinations, as may be warranted by experience, information or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

History: 1953 Comp., § 59-14-7, enacted by Laws 1972, ch. 63, § 7; 1975, ch. 290, § 5; 1993, ch. 322, § 6.

ANNOTATIONS

Cross references. — For exemption of environmental improvement board from authority of secretary of environment, *see* 9-7A-12 NMSA 1978.

For the federal Occupational Safety and Health Act of 1970, *see* 29 U.S.C. § 651 et seq.

The 1993 amendment, effective April 8, 1993, substituted "secretary" for "director" and "department" for "agency" in the fourth sentence of Subsection C; substituted "secretary" for "director upon his request" in the fifth sentence of Subsection C; and made minor stylistic changes throughout the section.

The legislature’s delegation of authority to the environmental improvement board to promulgate regulations addressing violence against convenience store workers does

not violate the constitutional doctrine of separation of powers. *N.M. Petroleum Marketers Assn. v. N.M. Envtl. Improvement Bd.*, 2007-NMCA-060, 141 N.M. 678, 160 P.3d 587.

The definitions of "convenience store" and "convenience goods" in the environmental improvement board regulations addressing violence against convenience store workers are not unconstitutionally vague. *N.M. Petroleum Marketers Assn. v. N.M. Envtl. Improvement Bd.*, 2007-NMCA-060, 141 N.M. 678, 160 P.3d 587.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.

Economic feasibility as factor affecting validity of, or obligation of compliance with, standards established under Occupational Safety and Health Act (29 USCS § 651 et seq.), 68 A.L.R. Fed. 732.

73 C.J.S. Public Administrative Law and Procedure § 87 et seq.

50-9-8. Duties and powers of the department.

The department shall:

A. prevent or abate detriment to the health and safety of employees arising out of and in the course of employment;

B. develop an effective and comprehensive program for the prevention or abatement of detriment to the health and safety of employees within the state;

C. advise and recommend an effective and comprehensive program of occupational health and safety applicable to all employees of public agencies of the state and its political subdivisions;

D. cause to be instituted legal proceedings to compel compliance with the Occupational Health and Safety Act or any regulation of the board;

E. accept, receive and administer grants or other funds or gifts from public or private agencies, including the federal government;

F. take reasonable steps to inform employees of their protections and obligations under the Occupational Health and Safety Act, including the provisions of applicable regulations; and

G. make reports to the secretary of the United States department of labor in the form and containing the information as the secretary may from time to time require.

History: 1953 Comp., § 59-14-8, enacted by Laws 1972, ch. 63, § 8; 1993, ch. 322, § 7.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" in the catchline and in the introductory paragraph and made minor stylistic changes in Subsection G.

50-9-9. Occupational health and safety review commission; creation; organization.

A. The occupational health and safety review commission is hereby established. The commission shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the senate, from among persons who by reason of training, education or experience are qualified to carry out the functions of the commission under the Occupational Health and Safety Act. One member each shall be chosen to reflect the views of labor, industry and of the general public. The governor shall designate one of the members of the commission to serve as chairman.

B. Terms of commission members shall be six years except that members of the commission first taking office shall serve as designated by the governor at the time of appointment: one for a term of two years, one for a term of four years and one for a term of six years. A vacancy caused by death, resignation or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the commission may be removed by the governor for inefficiency, neglect of duty or malfeasance in office.

C. For the purpose of carrying out its functions under the Occupational Health and Safety Act, two members of the commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

D. Every official act of the commission shall be entered of record and its hearings and records shall be open to the public. The commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings.

E. The commission may order testimony to be taken by deposition in any proceedings pending before it. Any person whose testimony may be material may be compelled to appear and testify, and to produce books, papers or documents in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the commission.

F. The commission may designate a hearing officer to take evidence in the hearing. The commission will then make its decision based on the evidence in the transcript of the hearing proceedings.

G. Members of the commission shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1953 Comp., § 59-14-8.1, enacted by Laws 1975, ch. 290, § 6.

ANNOTATIONS

Cross references. — For exemption of occupational health and safety review commission from authority of secretary of environment, *see* 9-7A-14 NMSA 1978.

For staff support from the department of environment, *see* 9-7A-14 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 131 et seq.

50-9-10. Right of entry and inspection; complaints; consultation; notification.

A. In order to carry out the purposes of the Occupational Health and Safety Act, the department's authorized representatives, upon presenting appropriate credentials to the owner, operator or agent in charge, are authorized to and may:

(1) enter and inspect any place of employment at reasonable times and without delay; and

(2) question privately the employer and employees and to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, the place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein. The department's representative is not authorized to question privately the employer or employees until the board has adopted regulations protecting the rights of such employer and employees.

B. Any employee or representative of employees may file a written complaint with the department concerning any alleged violation of a regulation or any hazardous condition. A copy of the complaint shall be provided to the employer at the time of the inspection. However, upon the request of the complainant, the complainant's shall not appear on the copy. The department shall investigate the complaint and notify the complainant and employer in writing of the results of the investigation and any action to be taken. If no action is contemplated, the department shall notify the complainant and include in the notice the reasons therefor. The department shall provide for the informal review of decisions not to take compliance action at the request of the complainant. The review shall not be by those who investigated the complaint.

C. In order to aid inspections, a representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the department inspector during the physical inspection of the work place. If there is no authorized employee representative, the department inspector shall consult with a reasonable number of employees.

D. Prior to or during any inspection of a work place, any employees or representative of employees employed in such work place may notify the department or the department inspector in writing of any violation of the Occupational Health and Safety Act which they have reason to believe exists in such work place. The department shall establish procedures for informal review of the decision made by the inspector, and, if no citation is issued with respect to the alleged violation, it shall furnish the employee requesting such review a written statement of the reasons for the department's final disposition of the case.

E. If an inspection reveals that employees are exposed to toxic materials or harmful physical agents at levels in excess of those prescribed by regulations of the board, the department shall provide the employees with access to the results of the inspection. The employer shall promptly notify the employees who are being exposed to the agents or materials in excess of the applicable regulations and inform them of the corrective action being taken or that review has been requested in accordance with Section 50-9-17 NMSA 1978.

F. It is unlawful for any person to give advance notice of any inspection to be conducted under the Occupational Health and Safety Act without the written approval of the secretary or the secretary's authorized representative.

G. The board shall adopt regulations to implement this section.

History: 1953 Comp., § 59-14-9, enacted by Laws 1972, ch. 63, § 9; 1975, ch. 290, § 7; 1983, ch. 49, § 1; 1993, ch. 322, § 8.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department's" for "agency's" and "department" for "agency" throughout the section and, in Subsection F, substituted "secretary" for "director" and made a minor stylistic change.

Regulations permitting private interviews are void. — The regulations promulgated by the environmental improvement board permitting private interviews of employees by the division inspector are void. *Kent Nowlin Constr., Inc. v. Envtl. Improvement Div.*, 1982-NMSC-094, 99 N.M. 294, 657 P.2d 621.

Employees may request that counsel of their choosing be present during interviews by the environmental improvement division, unless such counsel obstructs and impedes the division's investigation. The employee's counsel may be company counsel. *Kent Nowlin Constr., Inc. v. Envtl. Improvement Div.*, 1982-NMSC-094, 99 N.M. 294, 657 P.2d 621.

Employers are allowed to have company counsel or representatives present during agency interviews with employees. *Kent Nowlin Constr., Inc. v. Envtl. Improvement Div.*, 1982-NMSC-094, 99 N.M. 294, 657 P.2d 621.

Prison inmates may not file complaint. — Notwithstanding the fact that prison industries must comply with occupational health and safety standards, inmates engaged in prison operated industries or enterprises are not "employees" of the penitentiary for purposes of filing an occupational health and safety complaint with the environmental improvement division. 1981 Op. Att'y Gen. No. 81-23.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws §§ 132, 137, 138.

Validity, under federal constitution, of provisions of Occupational Safety and Health Act of 1970 (29 U.S.C.S. §§ 651 et seq.) relating to inspections, enforcement of civil penalties, and administrative or judicial review, 34 A.L.R. Fed. 82.

Right, under § 8(e) of Occupational Safety and Health Act (29 U.S.C.S. § 657(e)), of representative of employer or employees to accompany inspector during OSHA inspection, 35 A.L.R. Fed. 47.

Admissibility of evidence obtained by unconstitutional search in proceedings under Occupational Safety and Health Act (29 USCS § 651 et seq.), 67 A.L.R. Fed. 724.

50-9-11. Reports and record keeping by employers.

A. An employer shall keep such records and make such reports to the department as the board, by regulation, may require to carry out the purposes of the Occupational Health and Safety Act. Such regulation regarding records and reports shall be at least as effective as and consistent with the occupational safety and health record and report requirements of the United States department of labor. These records and reports shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

B. Employers shall maintain accurate records of employee exposures to potentially toxic material or harmful physical agents which are required to be monitored or measured as the board may prescribe by regulations. Employees and their representatives shall be given an opportunity to observe such monitoring and measuring. Employees and former employees shall be granted access to their own records as will indicate their own exposure to toxic material or harmful agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or levels that exceed those prescribed by an applicable regulation adopted pursuant to the Occupational Health and Safety Act and shall inform any employee who is being thus exposed of the corrective action being taken. Employers shall retain the records of exposure of employees to specific toxic material and harmful agents for periods of time to be specified in regulations.

History: 1953 Comp., § 59-14-10, enacted by Laws 1972, ch. 63, § 10; 1975, ch. 290, § 8; 1993, ch. 322, § 9.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" in the first sentence of Subsection A and made a minor stylistic change in Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 56 et seq.

Employer's tort liability to worker for concealing workplace hazard or nature or extent of injury, 9 A.L.R.4th 778.

Who is "employer" for purposes of Occupational Safety and Health Act (29 USCA §§ 651 et seq.), 153 A.L.R. Fed. 303.

50-9-12. Adoption of regulations; notice and hearing.

A. Any person may recommend or propose regulations to the board for promulgation. The board shall determine whether to hold a hearing within sixty days of submission of a proposed regulation.

B. No regulations shall be adopted, amended or repealed until after a public hearing by the board. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, time and place of the hearing and the manner in which interested persons may secure copies of any regulations proposed to be adopted, amended or repealed. The notice shall be published in a newspaper of general circulation in the state. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of hearings. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. Any person heard or represented at the hearing shall be given written notice of the action by the board. The board may designate a hearing officer to take evidence in the hearing and present the evidence to the board. A record shall be made of each hearing.

C. Notwithstanding the provisions of Subsection B of this section, the secretary may adopt an emergency regulation to take immediate effect upon its filing under the State Rules Act [Chapter 14, Article 4 NMSA 1978] if the secretary determines:

(1) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(2) that the emergency regulation is necessary to protect employees from the danger.

D. The emergency regulation shall be effective until superseded by a final regulation promulgated in accordance with the procedures prescribed in Subsection B of this section. The final regulation shall be promulgated within one hundred twenty days of the date of promulgation of the relevant emergency regulation.

E. If the emergency regulation is promulgated in response to an emergency temporary standard issued pursuant to the federal Occupational Safety and Health Act of 1970, then such regulation shall only be enforceable to the same extent as the federal emergency temporary standard.

F. If the federal emergency temporary standard is superseded by a federal permanent standard, then the state emergency regulation shall remain in effect for an additional one hundred twenty days after promulgation of the superseding standard. During this additional one hundred twenty days, the board shall promulgate a regulation in accordance with the procedures prescribed in Subsection B of this section.

History: 1953 Comp., § 59-14-11, enacted by Laws 1972, ch. 63, § 11; 1975, ch. 290, § 9; 1982, ch. 73, § 20; 1984, ch. 80, § 1; 1993, ch. 322, § 10.

ANNOTATIONS

Cross references. — For the federal Occupational Safety and Health Act of 1970, *see* 29 U.S.C. § 651 et seq.

The 1993 amendment, effective April 8, 1993, deleted the former final sentence of Subsection B, which read "No regulation, amendment or repeal thereof adopted by the board shall become effective until thirty days after its filing under the State Rules Act"; substituted "secretary may adopt" for "agency shall provide for" in the introductory paragraph of Subsection C; substituted "board" for "agency" in the second sentence of Subsection F; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.; 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws §§ 132, 137, 138.

73 C.J.S. Public Administrative Laws and Proceedings § 87 et seq.

50-9-13. Adopting standards by reference.

In the event the board wishes to adopt regulations that are identical with standards approved by an agency of the federal government, the board, after notice and hearing, may adopt the regulations by reference to the standards without setting forth the provisions of the standards.

History: 1953 Comp., § 59-14-12, enacted by Laws 1972, ch. 63, § 12; 1993, ch. 322, § 11.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, deleted the former second sentence, which read "Copies of standards adopted by reference must be attached to the regulations filed under the State Rules Act."

50-9-14. Emergency procedures.

A. The district courts shall have jurisdiction, upon petition of the secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided by the Occupational Health and Safety Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove the imminent danger and prohibit the employment of any individual in locations or under conditions where the danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations or, where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

B. Upon the filing of a petition, the district court may grant injunctive relief or a temporary restraining order in accordance with the New Mexico rules of civil procedure pending the outcome of an enforcement proceeding pursuant to the Occupational Health and Safety Act.

C. When the secretary or the secretary's representative determines that an emergency exists, he shall immediately inform the employees and employers of the hazards and take steps to obtain immediate abatement of the hazards by the employer.

D. If the secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the secretary in the district court for the district in which the imminent danger is alleged to exist for a writ of mandamus to compel the secretary to seek an order of the court as provided in this section.

History: 1953 Comp., § 59-14-13, enacted by Laws 1972, ch. 63, § 13; 1975, ch. 290, § 10; 1993, ch. 322, § 12.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "secretary" for "director" throughout the section and made minor stylistic changes in Subsections A and C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws §§ 39, 41, 53.

50-9-15. Validity of regulation; variance determination; judicial review.

A. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for further relief. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation pursuant to the State Rules Act [Chapter14, Article 4 NMSA 1978]. The board shall be made a party to the action.

B. Upon appeal, the court of appeals shall set aside a regulation only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

C. A variance petitioner may appeal to the district court from an order of the department denying the variance. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 59-14-14, enacted by Laws 1972, ch. 63, § 14; 1993, ch. 322, § 13; 1999, ch. 265, § 49.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, deleted former Subsection B, relating to a variance petitioner's right to appeal to the court of appeals from an order of the department denying the variance, and added Subsection C.

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" in two places in Subsection B; deleted former Subsection C, pertaining to the procedure for perfecting an appeal to the court of appeals; and redesignated former Subsection D as Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 132.

Judicial relief against, or review of, action or orders of Occupational Safety and Health Review Commission under Occupational Safety and Health Act of 1970 (29 U.S.C.S. §§ 651 et seq.), 22 A.L.R. Fed. 508.

Validity, under federal constitution, of provisions of Occupational Safety and Health Act of 1970 (29 U.S.C.S. §§ 651 et seq.) relating to inspections, civil penalties, and administrative or judicial review, 34 A.L.R. Fed. 82.

50-9-16. Variances; temporary variances.

A. The department may grant an individual variance from any regulation adopted pursuant to the Occupational Health and Safety Act setting health or safety standards whenever it is found by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used by the petitioner will provide employment and places of employment to his employees which are as safe and healthful as those that would prevail if he complied with the existing regulation.

B. No variance shall be granted until the department has considered the relative interests of the petitioner, his employees and the general public. The order so issued shall describe the conditions the employer must maintain and the practices, means, methods, operations and procedures which he must adopt and utilize to the extent they differ from the regulation in question. The secretary may at any time on his own motion, or upon application by an employer or employee after six months have elapsed from the date of issuance of the order granting a variance, after a hearing, modify or revoke such order.

C. A petitioner for a variance shall file a petition with the department in the manner prescribed by regulation. The department shall give the affected employees prompt notice of the application for a variance and an opportunity to request a hearing. When properly filed, the secretary shall promptly investigate the petition and provide for the disposition thereof.

D. The department may grant the variance without hearing when no hearing has been requested by either employees or employer and if it deems that no substantial public interest is involved. If the department is opposed to the granting of the variance, then a hearing shall be held upon the request of the petitioner. A record shall be made of the hearing. In the hearing, the burden of proof shall be upon the petitioner.

E. Any employer may apply to the department for a temporary order granting a variance from a regulation promulgated under the Occupational Health and Safety Act by submitting a petition to the department in the manner prescribed by regulation. A temporary variance may be granted only if the employer establishes:

(1) that he is unable to comply with a regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the regulation or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) that he is taking all available steps to safeguard his employees against the hazards covered by the regulation; and

(3) that he has an effective program for coming into compliance with the regulation as quickly as practicable.

F. Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the regulation. Such a temporary variance may be granted only after notice to employees and an opportunity for a hearing. Provided that the department may issue one interim order to be effective until a decision is made or a decision rendered if a hearing is requested. No temporary variance may be in effect for longer than the period needed by the employer to achieve compliance with the regulation or one year, whichever is shorter, except that such variance may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the variance. No renewal of a temporary variance may remain in effect for longer than one hundred eighty days.

G. The department is authorized to grant a variance from any regulation whenever it determines that such a variance is necessary to an employer to participate in an experiment approved by the department designated to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

H. The department shall keep an appropriately indexed record of all variances granted under this section. The record shall be open for public inspection.

History: 1953 Comp., § 59-14-15, enacted by Laws 1972, ch. 63, § 15; 1975, ch. 290, § 11; 1993, ch. 322, § 14.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" and "secretary" for "director" throughout the section; deleted "that the proponent of the variance has demonstrated" following "it is found" and substituted "the petitioner" for "an employer" near the middle of Subsection A; substituted "may be granted" for "will be granted" in the introductory paragraph of Subsection E; deleted "and" at the end of Paragraph (1) of Subsection E; and made a minor stylistic change in Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws §§ 55, 132.

50-9-17. Enforcement; appeals.

A. If as a result of investigation the department has good cause to believe that any employer is violating any provision of the Occupational Health and Safety Act or any rule of the board, the department shall send prompt notice of the violation by certified mail to the employer believed to be in violation. The citation shall describe with particularity the provision of the Occupational Health and Safety Act or rule alleged to

have been violated. The notice shall also state the time for abatement of the violation. Each citation issued pursuant to this section, or a copy thereof, shall be promptly and prominently posted by the cited employer, as prescribed in rules issued by the board, at or near the place where the violation occurred. No citation may be issued under this section after the expiration of six months following the occurrence of any violation. The board may issue a regulation prescribing procedures for the use of a notice in lieu of a citation with respect to de minimis violations that have no direct or immediate relationship to safety or health.

B. If the department issues a citation as provided in Subsection A of this section, it shall, within a reasonable time after issuance of the citation, notify the employer by certified mail of the penalty, if any, proposed to be assessed and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the citation or proposed penalty. If within fifteen working days from the receipt of the notice issued by the department the employer fails to notify the department that he intends to contest the citation or proposed penalty and no notice is filed by an employee or employee representative as provided by Subsection D of this section within that time, the citation and the assessment of penalty, if any, as proposed shall be deemed the final order of the commission and not subject to review by any court or agency.

C. If the department has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the abatement period permitted, which period shall not begin to run until the entry of a final order by the commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the department shall notify the employer by certified mail of the failure to correct and of the penalty proposed to be assessed by reason of the failure and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the department's notification or the proposed assessment of penalty. If within fifteen working days from the receipt of notification issued by the department the employer fails to notify the department that he intends to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be deemed a final order of the commission and not subject to review by any court or department.

D. If any employer notifies the department in writing that he intends to contest the citation issued to him pursuant to provisions of Subsection A of this section or notification issued pursuant to provisions of Subsection B or C of this section or if within fifteen working days of the receipt of notice pursuant to the provisions of this section any employee of an employer cited or any employee's representative files a notice with the department alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the commission within fifteen days after the administrative review. The commission shall afford an opportunity for a hearing within thirty days after receipt of the petition. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying or

vacating the department's citation or the proposed penalty fixed by the department or directing other appropriate relief.

E. At any time prior to the expiration of an abatement period, an employer may notify the department in writing that he is unable to take the corrective action required within the period of abatement. The department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the commission after the administrative review. The commission shall afford prompt opportunity for a hearing after receipt of the petition. The only grounds for modifying an abatement period provided by this subsection are a showing by the employer of a good-faith effort to comply with the abatement requirement of a citation and that abatement has not been completed because of factors beyond the employer's control.

F. Affected employees or their representatives shall be provided an opportunity to participate as parties at both informal administrative review and commission hearings provided for in this section.

G. Any person, including the department, adversely affected by an order of the commission issued pursuant to provisions of this section may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 59-14-16, enacted by Laws 1972, ch. 63, § 16; 1975, ch. 290, § 12; 1993, ch. 322, § 15; 1998, ch. 55, § 47; 1999, ch. 265, § 50.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection G.

The 1998 amendment, effective September 1, 1998, in the section heading, inserted "; appeals"; in Subsection A, substituted "rule" for "regulation" in two places and "rules" for "regulations"; in Subsection B, substituted "as provided in" for "under"; in Subsection D, substituted "pursuant to provisions of" for "under" three times, inserted "of this section"; in Subsection E, substituted "provided by" for "under"; in Subsection F, substituted "provided for in" for "under"; rewrote Subsection G; and made minor stylistic changes throughout the section.

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" and "department's" for "agency's" throughout the section; made minor stylistic changes in Subsections A and B; deleted "occupational health and safety review" preceding "commission" in the second sentence of Subsection D and in the third sentence of Subsection E; deleted "and such order shall become final fifteen days after its issuance" at the end of Subsection D; rewrote Subsection G to the extent that a detailed comparison is impracticable; and deleted former Subsection H, pertaining to the procedure for appeals from decisions of the district court.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 132.

Judicial relief against, or review of, action or orders of Occupational Safety and Health Review Commission under Occupational Safety and Health Act of 1970 (29 U.S.C.S. §§ 651 et seq.), 22 A.L.R. Fed. 508.

Validity, under Federal Constitution, of provisions of Occupational Safety and Health Act of 1970 (29 U.S.C.S. §§ 651 et seq.) relating to inspections, enforcement of civil penalties and administrative or judicial review, 34 A.L.R. Fed. 82.

Economic feasibility as factor affecting validity of, or obligation of compliance with, standards established under Occupational Safety and Health Act (29 USCS § 651 et seq.), 68 A.L.R. Fed. 732.

Who is "employer" for purposes of Occupational Safety and Health Act (29 USCA §§ 651 et seq.), 153 A.L.R. Fed. 303.

50-9-18. Subpoena power.

In connection with investigations or enforcement hearings conducted under the Occupational Health and Safety Act [50-9-1 to 50-9-25 NMSA 1978], the department may apply to the district court for an order requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the state. Any district court, upon application by the department, shall have jurisdiction to issue to such person an order requiring the person to appear and to produce evidence if, as and when so ordered and to give testimony relating to the matter under investigation if the court finds that the evidence or testimony sought is discoverable under the Rules of Civil Procedure for The District Courts. Any failure to obey an order of the court may be punished by the court under its powers of contempt.

History: 1953 Comp., § 59-14-17, enacted by Laws 1972, ch. 63, § 17; 1993, ch. 322, § 16.

ANNOTATIONS

Cross references. — For witness fees, *see* 38-6-4 NMSA 1978.

For depositions and discovery, *see* Rules 1-026 to 1-037 NMRA.

The 1993 amendment, effective April 8, 1993, substituted "department" for "board or agency" in the first and third sentences and made a minor stylistic change.

Employers may be present at discovery proceedings conducted by the environmental improvement division. *Kent Nowlin Constr., Inc. v. Envtl. Improvement Div.*, 1982-NMSC-094, 99 N.M. 294, 657 P.2d 621.

50-9-19. Accident reports and records.

A. Every employer shall keep records and submit reports of occupational injuries and illnesses as prescribed by the department. Reports shall not require employee identification by name.

B. The department shall publish annually a detailed summary of the statistical data received from employers. The department shall make a copy of such summary available on request to each employer, and the summary shall be made available upon request to any person having an interest in the report. In the preparation, publication or release of the statistical summary, the department shall not in any manner disclose information identifying any employer unless prior permission has been obtained from the employer in writing. The reports of each employer shall remain confidential and shall not be released, revealed or otherwise disclosed to any person other than the bureau of labor statistics and the occupational safety and health administration of the United States department of labor without prior permission of the employer unless pursuant to an administrative hearing of the board or an order of a court of competent jurisdiction.

History: 1953 Comp., § 59-14-18, enacted by Laws 1972, ch. 63, § 18; 1993, ch. 322, § 17.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 137.

50-9-20. Coordination.

For the purpose of carrying out the provisions of the Occupational Health and Safety Act, the department shall coordinate, to the greatest extent practicable, the occupational health and safety activities of all state and local agencies. It shall advise, consult and cooperate with other agencies of the state, federal government, other states and interstate agencies and with affected public and private organizations.

History: 1953 Comp., § 59-14-19, enacted by Laws 1972, ch. 63, § 19; 1993, ch. 322, § 18.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" in the first sentence.

50-9-21. Civil actions; admissibility as evidence; confidentiality of trade secrets.

A. Nothing in the Occupational Health and Safety Act shall be construed or held to supersede or in any manner affect the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978] or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties or liabilities of employers and employees under the laws of this state with respect to injuries, occupational or other diseases or death of employees arising out of or in the course of employment.

B. Statements, reports and information obtained or received by the department in connection with an investigation under or the administration or enforcement of the provisions of the Occupational Health and Safety Act shall be made available except to the extent privileged by law. Information obtained under the provisions of Subsection B of Section 50-9-6 NMSA 1978 shall remain confidential. The information may be used for statistical purposes if the information revealed is not identified as applicable to any individual employer.

C. All information reported to or otherwise obtained by the secretary or the secretary's authorized representative in connection with any inspection or proceeding under this section which contains or might reveal a trade secret, as defined in Paragraph (2) of this subsection, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out the Occupational Health and Safety Act. In any such proceeding, the secretary, the secretary's authorized representative or a court of competent jurisdiction, as the case may be, shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(1) It is unlawful for any employee of the agency to reveal to any individual other than another employee of the department the trade secrets of any employer except in response to an order of a district court, the court of appeals, the supreme court or a federal court in an action to which the state is a party and in which the information sought is material to the inquiry.

(2) For the purposes of this subsection, "trade secrets" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. A trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access for limited purposes.

History: 1953 Comp., § 59-14-20, enacted by Laws 1972, ch. 63, § 20; 1975, ch. 290, § 13; 1983, ch. 49, § 2; 1984, ch. 80, § 2; 1993, ch. 322, § 19.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "department" for "agency" in Subsection B and Paragraph (1) of Subsection C; substituted "secretary" for "director" in two places in the introductory paragraph of Subsection C; and made minor stylistic changes in Subsections A and C.

Regulations do not affect employer's liability under Workers' Compensation Act. — Regulations adopted under the authority of the state Occupational Health and Safety Act do not affect an employer's liability under the Workers' Compensation Act, and safety devices required by such regulations are not required by law for purposes of Section 52-1-10B NMSA 1978. *Casillas v. S.W.I.G.*, 1981-NMCA-045, 96 N.M. 84, 628 P.2d 329, cert. denied, 96 N.M. 116, 628 P.2d 686, and appeal dismissed, 454 U.S. 934, 102 S. Ct. 467, 70 L. Ed. 2d 242 (1981).

OSHA violations as evidence of negligence. — Occupational Safety and Health Act violations do not constitute a basis for assigning negligence as a matter of law, but evidence of such violations can be considered in determining the required standard of care. *Valdez v. Cillessen & Son Inc.*, 1987-NMSC-015, 105 N.M. 575, 734 P.2d 1258.

Modification of benefits using OSHA regulations precluded. — The use of OSHA regulations to modify an employee's workers' compensation benefits is clearly precluded under Subsection A. *Bateman v. Springer Bldg. Materials Corp.*, 1989-NMCA-039, 108 N.M. 655, 777 P.2d 383, cert. denied, 108 N.M. 681, 777 P.2d 1325.

Law reviews. — For annual survey of New Mexico law relating to workers' compensation, see 13 N.M.L. Rev. 495 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws §§ 131, 132, 137.

Employer's tort liability to worker for concealing workplace hazard or nature or extent of injury, 9 A.L.R.4th 778.

Liability of labor union for injury or death allegedly resulting from unsafe working conditions, 14 A.L.R.4th 1161.

What constitutes "trade secrets and commercial or financial information obtained from person and privileged or confidential", exempt from disclosure under Freedom of Information Act (5 USCS § 552 (b)(4)) (FOIA), 139 A.L.R. Fed. 225.

50-9-22. Preemption.

A. Nothing in the Occupational Health and Safety Act shall affect the jurisdiction of any state agency or any political subdivision performing like functions or exercising like responsibilities with regard to occupational health and safety matters except as provided in Subsection B or C of this section.

B. Whenever the board prescribes or adopts a regulation under the procedures provided in the Occupational Health and Safety Act, the regulation shall, when a copy thereof is filed with the clerk of the political subdivision to which it applies, establish a minimum requirement concerning the matters covered by the regulation and shall be construed in connection with any local requirement relative to the same matter. The regulation of the board amends or modifies any requirement of the local standard which does not meet the regulation.

C. The Occupational Health and Safety Act and regulations promulgated under it, and not the acts and regulations enforced by the state mine inspector, shall apply to places of employment subject to the jurisdiction of the United States department of labor acting under the provisions of the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended.

D. Compliance with a regulation of the board does not relieve any person from the obligation to comply with a stricter state agency or political subdivision health or safety requirement, but the state agency or political subdivision shall be responsible for the enforcement of the health and safety requirements established by that state agency or local authority.

History: 1953 Comp., § 59-14-21, enacted by Laws 1972, ch. 63, § 21; 1983, ch. 19, § 1.

ANNOTATIONS

Cross references. — For the federal Occupational Safety and Health Act of 1970, *see* 29 U.S.C. § 651 et seq.

50-9-23. Limitation on applicability of the act to certain employers and their employees.

The Occupational Health and Safety Act and regulations promulgated under it do not apply to a specific activity of an employer or to a specific occupational health or safety condition of his employees if the specific activity or specific occupational health or safety condition is subject to the jurisdiction of and is regulated by:

A. any federal agency except the United States department of labor acting under the provisions of the Occupational Safety and Health Act of 1970 (84 Stat. 1590); or

B. the board pursuant to the agreement specified in Section 74-3-15 NMSA 1978.

History: 1953 Comp., § 59-14-22, enacted by Laws 1972, ch. 63, § 22; 1983, ch. 19, § 2.

ANNOTATIONS

Cross references. — For the federal Occupational Safety and Health Act of 1970, *see* 29 U.S.C. § 651 et seq.

Accident occurring on federal property within state. — Construction company which was a subcontractor on a federal project failed to show that the federal government had exclusive jurisdiction over the site of the project or that accident site was subject to the federal Occupational Health and Safety Act, rather than the New Mexico Occupational Health and Safety Act. *Inca Constr. Co. v. Rogers*, 1997-NMCA-056, 123 N.M. 514, 943 P.2d 548.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who is "employer" for purposes of Occupational Safety and Health Act (29 U.S.C.S. § 651 et seq.), 27 A.L.R. Fed. 943 and 153 A.L.R. Fed. 303.

50-9-24. Penalties.

A. Any employer who willfully or repeatedly violates any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act may be assessed a civil penalty not to exceed one hundred twenty-six thousand seven hundred forty-nine dollars ($126,749) for each violation; provided that a civil penalty shall not be less than nine thousand fifty-four dollars ($9,054) for each willful violation.

B. Any employer who has received a citation for a serious violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act shall be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars ($12,675) for each violation.

C. Any employer who has received a citation for a violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act that is determined not to be of a serious nature may be assessed a civil penalty of up to twelve thousand six hundred seventy-five dollars ($12,675) for each violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding provided for in Section 50-9-17 NMSA 1978 initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars ($12,675) for each day during which the failure or violation continues.

E. Any civil penalty assessed against the state, a political subdivision of the state or any agency of either pursuant to Subsection B, C or G of this section shall not be collected during the time permitted for correction of the violation, and if the violation is corrected within such time, the civil penalty shall be deemed paid without further action of the state, political subdivision or agency.

F. For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition that exists or from one or more practices, means, methods, operations or processes that have been adopted or are in use in the place of employment unless the employer did not and could not with the exercise of reasonable diligence know of the presence of the violation.

G. Any employer who violates any of the posting requirements as prescribed by the Occupational Health and Safety Act shall be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars ($12,675) for each violation.

H. The commission has authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations.

I. Civil penalties imposed pursuant to the provisions of this section shall be paid into the general fund.

J. No later than April 1 of each year, the secretary shall adjust as necessary the minimum and maximum penalty amounts established in Subsections A through D and G of this section to account for inflation. The amounts shall be increased by the percentage of the preceding calendar year's increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor. The amount of the increase, if any, shall be rounded to the nearest dollar, but shall not exceed one hundred fifty percent of the current penalty amount. The secretary may issue rules to carry out the provisions of this subsection that conform with the federal Occupational Safety and Health Act of 1970.

K. Any employer who willfully violates any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act causing death to any employee by that violation shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for not more than six months or by both; except that if the conviction is for a violation committed after a first conviction of the person, punishment shall be by a fine of not more than twenty thousand dollars ($20,000) or by imprisonment for less than one year or by both.

L. Any person who gives advance notice of any inspection to be conducted under the Occupational Health and Safety Act without authority of the secretary shall, upon

conviction, be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months or by both.

M. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the Occupational Health and Safety Act shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) for each such violation or by imprisonment for not more than six months or by both.

N. A person who reveals a trade secret in violation of Section 50-9-21 NMSA 1978 violates this subsection and shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for less than one year or both.

History: 1953 Comp., § 59-14-23, enacted by Laws 1975, ch. 290, § 14; 1979, ch. 153, § 1; 1992, ch. 45, § 1; 1993, ch. 322, § 20; 2017, ch. 126, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1975, ch. 290, § 14, repeals 59-14-23, 1953 Comp., relating to definition of violations of the Occupational Health and Safety Act and prescribing penalties for such, and enacts the above section.

Cross references. — For the federal Occupational Safety and Health Act of 1970, *see* 29 U.S.C. § 651 et seq.

The 2017 amendment, effective April 6, 2017, adjusted the penalties for violations of the Occupational Health and Safety Act to conform with federal law, and required the department of environment to adjust penalties on an annual basis to account for inflation; in Subsection A, after "civil penalty not to exceed", deleted "seventy thousand dollars ($70,000)" and added "one hundred twenty-six thousand seven hundred forty-nine dollars ($126,749)", after "penalty shall not be less than", deleted "five thousand dollars ($5,000)" and added "nine thousand fifty-four dollars ($9,054)"; in Subsection B, after "civil penalty not to exceed", deleted "seven thousand dollars ($7,000)" and added "twelve thousand six hundred seventy-five dollars ($12,675)"; in Subsection C, after "assessed a civil penalty of up to", deleted "seven thousand dollars ($7,000)" and added "twelve thousand six hundred seventy-five dollars ($12,675)"; in Subsection D, after "any review proceeding", deleted "under" and added "provided for in", and after "civil penalty not to exceed", deleted "seven thousand dollars ($7,000)" and added "twelve thousand six hundred seventy-five dollars ($12,675)"; in Subsection G, after "civil penalty not to exceed", deleted "seven thousand dollars ($7,000)" and added "twelve thousand six hundred seventy-five dollars ($12,675)"; in Subsection I, after "penalties imposed", deleted "under" and added "pursuant to the provisions of"; and added a new Subsection J and redesignated the succeeding subsections accordingly.

The 1993 amendment, effective April 8, 1993, substituted "commission" for "director" in Subsection D; substituted "secretary" for "director or his authorized representative" in Subsection K; and made minor stylistic changes throughout the section.

The 1992 amendment, effective July 1, 1992, substituted all of the present language of Subsection A following "exceed" for "ten thousand dollars ($10,000) for each violation"; deleted "other than the state, a political subdivision, or any agency of either" following "employer" in Subsection B; substituted "seven thousand dollars ($7,000)" for "one thousand dollars ($1,000)" in Subsections B, C, D, and G; deleted former Subsection C, relating to the state and political subdivisions; redesignated former Subsections D and E as present Subsections C and D; deleted "of the Occupational Health and Safety Act" following "1978" in Subsection D; and added present Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 131 et seq.

Validity, under federal constitution, of provisions of Occupational Safety and Health Act of 1970 (29 U.S.C.S. § 651 et seq.) relating to inspections, enforcement of civil penalties, and administrative or judicial review, 34 A.L.R. Fed. 82.

Who is "employer" for purposes of Occupational Safety and Health Act (29 USCA §§ 651 et seq.), 153 A.L.R. Fed. 303.

What constitutes "willful" violation for purposes of §§ 17(a) or (e) of Occupational Safety and Health Act of 1970 (29 U.S.C.A. § 666(a) or § 666(e)), 161 A.L.R. Fed. 561.

50-9-25. Discrimination.

A. No person or employer shall discharge or in any manner discriminate against any employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Occupational Health and Safety Act or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by the Occupational Health and Safety Act.

B. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such alleged violation occurs, file a complaint with the secretary, in writing and acknowledged by the employee, alleging such discrimination. Upon receipt of the complaint, the secretary shall cause such investigation to be made as he deems appropriate. Within sixty days of the receipt of a complaint filed under this section, the secretary shall notify the complainant of his determination. If, upon such investigation, the secretary determines that the provisions of this section have been violated, he shall file a petition in the district court for the political subdivision in which the alleged violation occurred to restrain the violation of Subsection A of this section and for other

appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

History: 1953 Comp., § 59-14-24, enacted by Laws 1975, ch. 290, § 15; 1993, ch. 322, § 21.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, substituted "secretary" for "director" in four places in Subsection B and made minor stylistic changes in Subsections A and B.

Public policy. — This section, prohibiting discrimination against employees for filing safety complaints, constitutes a statement of public policy, the violation of which may be used to establish a claim for retaliatory discharge. *Sandoval v. N.M. Tech. Grp.*, 174 F.Supp.2d 1224 (D.N.M. 2001).

Common-law remedy for wrongful discharge. — This section does not provide the exclusive remedy for an employee alleging wrongful discharge in retaliation for reporting safety violations. An employee also has a common-law remedy for wrongful discharge. *Gutierrez v. Sundancer Indian Jewelry, Inc.*, 1993-NMCA-156, 117 N.M. 41, 868 P.2d 1266, cert. denied, 117 N.M. 121, 869 P.2d 820 (1994).

Retaliatory discharge action. — An instruction to the jury in an action for retaliatory discharge properly quoted this section as a statement of public policy whose violation may be used to establish a retaliatory discharge. *Weidler v. Big J Enters., Inc.*, 1998-NMCA-021, 124 N.M. 591, 953 P.2d 1089.

Law reviews. — For article, "Defending the Abusively Discharged Employee: In Search of a Judicial Solution," see 12 N.M.L. Rev. 711 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability for discharge of at-will employee for in-plant complaints or efforts relating to working conditions affecting health or safety, 35 A.L.R.4th 1031.

Liability for retaliation against at-will employee for public complaints or efforts relating to health or safety, 75 A.L.R.4th 13.

Pre-emption by Workers' Compensation Statute of employee's remedy under state "Whistleblower" Statute, 20 A.L.R.5th 677.

After-acquired evidence of employee's misconduct as barring or limiting recovery in action for wrongful discharge, 34 A.L.R.5th 699.

Excessiveness or adequacy of damages for wrongful termination of at-will employee under state law, 86 A.L.R.5th 397.

Who are "public employers" or "public employees" within the meaning of state whistleblower protection acts, 90 A.L.R.5th 687.

Common law retaliatory discharge of employee for refusing to perform or participate in unlawful or wrongful acts, 104 A.L.R.5th 1.

Common law retaliatory discharge of employee for disclosing unlawful acts or other misconduct of employer or fellow employees, 105 A.L.R.5th 351.

Federal pre-emption of whistleblower's state-law action for wrongful retaliation, 99 A.L.R. Fed. 775.

What constitutes appropriate relief for retaliatory discharge under § 11(c) of Occupational Safety and Health Act (OSHA) (29 USCS § 660(c)), 134 A.L.R. Fed. 629.

ARTICLE 10
Sewer Gas

50-10-1. [Permitting entry into sewer line without testing atmosphere unlawful; detection of flammable gas or vapor; entry without adequate ventilation unlawful.]

It shall be unlawful for any person, firm or corporation to require, authorize or knowingly permit any person in the employ or subject to the control of such person, firm or corporation, to enter through a manhole or otherwise into any sewer in this state, whether the same is in service or under construction, without first testing the atmosphere in said sewer at the place or places of entry by use of apparatus to detect the presence of any flammable gas or vapor; and in the event the presence of any flammable gas or vapor is so detected, it shall be unlawful for any such person, firm or corporation to require, authorize or knowingly permit any such employee or controlled person to enter into said sewer unless and until the same has been, at the intended place or places of entry, adequately ventilated and made safe from the hazards of fire and explosion.

History: 1953 Comp., § 12-10-1, enacted by Laws 1959, ch. 175, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Plant and Job Safety - OSHA and State Laws § 135 et seq.

50-10-2. [Testing atmosphere in sewer line; time and frequency.]

The requirements of Section 1 [50-10-1 NMSA 1978] shall be followed at the beginning of every workday, and also at the resumption of work following each meal period and also at the beginning of each shift in the event more than one shift per day is used; provided that such requirements need not be followed more often than once each four hours.

History: 1953 Comp., § 12-10-2, enacted by Laws 1959, ch. 175, § 2.

50-10-3. [Detection of flammable gas or vapor; danger suspected; entry without cautioning against use of exposed flame or creation of electrical spark unlawful.]

In the event that the presence of flammable gas or vapor is detected in any sewer, or there exists reasonable ground for suspecting the danger therein of any such gas or vapor, then it shall be unlawful, irrespective of compliance with Section 1 [50-10-1 NMSA 1978] above, for any person, firm or corporation to require, authorize or knowingly permit any such employee or controlled person to enter into said sewer, through a manhole or otherwise, without first cautioning such employee or controlled person against using any exposed flame or creating any electrical spark while in or about the said sewer.

History: 1953 Comp., § 12-10-3, enacted by Laws 1959, ch. 175, § 3.

50-10-4. [Safety measures and devices; duty of employer to supply.]

Nothing herein shall be construed to relieve any person, firm or corporation requiring, authorizing or knowingly permitting a person in the employ or subject to the control of such person, firm or corporation, to enter into or remain in a sewer in this state from any duty of taking or supplying proper and reasonable safety measures, practices and devices during the time or times that its said employee or other controlled person shall be in such sewer, to the end that no dangerous concentration of flammable gas or gases, or noxious gas or gases, shall occur; and the requirements of this act [50-10-1 to 50-10-6 NMSA 1978] shall be cumulative of such other duty or duties.

History: 1953 Comp., § 12-10-4, enacted by Laws 1959, ch. 175, § 4.

50-10-5. [Definitions.]

The term "sewer" as used herein shall mean any underground conduit composed of metal, concrete, clay, vitreous or other materials designed for the flowage of water or any waste product or products (including, without being limited to, storm sewers and sanitary sewers), and shall include any and all junction boxes, manholes and gutters and other appurtenances constituting any part of the sewer or of a sewer system.

The term "apparatus to detect the presence of any flammable gas or vapor", as used herein, shall mean any of the standard devices commercially available designed to detect, by the principle of the wheatstone bridge or other recognized technique, the presence in the atmosphere of flammable gas or vapor.

History: 1953 Comp., § 12-10-5, enacted by Laws 1959, ch. 175, § 5.

50-10-6. [Penalties for violation.]

Any person, firm or corporation violating this act [50-10-1 to 50-10-6 NMSA 1978] shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment from one day to ten days, or by both such fine and imprisonment, and each day of violation shall constitute a separate offense.

History: 1953 Comp., § 12-10-6, enacted by Laws 1959, ch. 175, § 6.

ARTICLE 11
Employee Privacy

50-11-1. Short title.

This act [50-11-1 to 50-11-6 NMSA 1978] may be cited as the "Employee Privacy Act".

History: Laws 1991, ch. 244, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — What is "record" within meaning of Privacy Act of 1974 (5 USCS § 552a), 121 A.L.R. Fed. 465.

What is agency subject to Privacy Act Provisions (5 USCA § 552a), 150 A.L.R. Fed. 521.

50-11-2. Definitions.

As used in the Employee Privacy Act:

A. "employee" means a person that performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, and includes a person employed by the state or a political subdivision of the state;

B. "employer" means a person that has one or more employees and includes an agent of an employer and the state or a political subdivision of the state; and

C. "person" means an individual, sole proprietorship, partnership, corporation, association or any other legal entity.

History: Laws 1991, ch. 244, § 2.

50-11-3. Employers; unlawful practices.

A. It is unlawful for an employer to:

(1) refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a smoker or nonsmoker, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours; or

(2) require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

B. The provisions of Subsection A of this section shall not be deemed to protect any activity that:

(1) materially threatens an employer's legitimate conflict of interest policy reasonably designed to protect the employer's trade secrets, proprietary information or other proprietary interests; or

(2) relates to a bona fide occupational requirement and is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer.

History: Laws 1991, ch. 244, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Preemption of state law wrongful discharge claim, not arising from whistleblowing, by § 541(a) of Employee Retirement Income Security Act of 1974 (29 U.S.C.A. § 1144(a)), 176 A.L.R. Fed. 433.

50-11-4. Remedies.

Any employee claiming to be aggrieved by any unlawful action of an employer pursuant to Section 3 [50-11-3 NMSA 1978] of the Employee Privacy Act may bring a civil suit for damages in any district court of competent jurisdiction. The employee may be awarded all wages and benefits due up to and including the date of the judgment.

History: Laws 1991, ch. 244, § 4.

50-11-5. Court fees and costs.

In any civil suit arising from the Employee Privacy Act, the court shall award the prevailing party court costs and reasonable attorneys' fees.

History: Laws 1991, ch. 244, § 5.

50-11-6. Mitigation of damages.

Nothing in the Employee Privacy Act shall be construed to relieve a person from the obligation to mitigate damages.

History: Laws 1991, ch. 244, § 6.

ARTICLE 12
Employer Immunity for Employee References

50-12-1. Employer immunity from liability for references on former employee.

When requested to provide a reference on a former or current employee, an employer acting in good faith is immune from liability for comments about the former employee's job performance. The immunity shall not apply when the reference information supplied was knowingly false or deliberately misleading, was rendered with malicious purpose or violated any civil rights of the former employee.

History: Laws 1995, ch. 152, § 1.

ANNOTATIONS

Cross references. — For unlawful acts under the Personnel Act, *see* 10-9-22 NMSA 1978.

For the Tort Claims Act, *see* 41-4-1 NMSA 1978.

For limitations on recoverable damages tort actions based on single publication or utterance, *see* 41-7-1 NMSA 1978.

Where employee resigned, employer's statement that employee "terminated" on a specific date, could not be interpreted as a statement that the employee "was terminated" by the employer. *DiMarco v. Presbyterian Healthcare Servs., Inc.*, 2007-NMCA-053, 141 N.M. 735, 160 P.3d 916, cert. denied, 2007-NMCERT-005, 141 N.M. 762, 161 P.3d 259.

An employee cannot rely on the differences between his evaluation form and the evaluation forms of other employees to prove that an employer did not act in good faith when the disclosures made by the employer were truthful. *DiMarco v. Presbyterian Healthcare Servs., Inc.*, 2007-NMCA-053, 141 N.M. 735, 160 P.3d 916, cert. denied, 2007-NMCERT-005, 141 N.M. 762, 161 P.3d 259.

Law reviews. — For note, "Employment Law – an Employer's Duty to Third Parties when Giving Employment Recommendations – Davis v. Board of County Commissioners of Dona Ana County," see 30 N.M.L. Rev. 307 (2007).

ARTICLE 13
State Directory of New Hires

50-13-1. Short title.

Sections 2 through 5 [50-13-1 to 50-13-4 NMSA 1978] of this act may be cited as the "State Directory of New Hires Act".

History: Laws 1997, ch. 237, § 2.

ANNOTATIONS

Cross references. — For provisions relating to establishing a state case registry of obligors and related information and additional support enforcement procedures, *see* 27-1-8 to 27-1-14 NMSA 1978.

For single state agency designation for Title IV-D, *see* 27-2-27 NMSA 1978.

For the Support Enforcement Act, *see* Chapter 40, Article 4A NMSA 1978.

50-13-2. Definitions.

As used in the State Directory of New Hires Act:

A. "employee" means a person who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. It does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to Section 4 of [50-13-3 NMSA

1978] this act with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission;

B. "employer" means the same as the term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization; and

C. "labor organization" means the same as the term in Section 2(5) of the National Labor Relations Act and includes any entity which is used by the organization and an employer to carry out requirements described in Section 8(f)(3) of such act of an agreement between the organization and the employer.

History: Laws 1997, ch. 237, § 3.

ANNOTATIONS

Cross references. — For Chapter 24 of the Internal Revenue Code, *see* 26 U.S.C. § 3401 et seq.

For Section 3401(d) of the Internal Revenue Code, *see* 26 U.S.C. § 3401(d).

For Sections 2(5) and 8(f)(3) of the National Labor Relations Act, *see* 29 U.S.C. §§ 152(5) and 158(f)(3), respectively.

50-13-3. State directory of new hires.

A. The human services department, acting as the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act, shall, not later than October 1, 1997, establish an automated directory to be known as the state directory of new hires, which shall contain information supplied by employers on each newly hired or rehired employee.

B. The state directory of new hires shall use the information received to locate individuals for purposes of establishing paternity and establishing, modifying and enforcing child support obligations and may disclose such information to any agent of the state Title IV-D agency that is under contract with the agency to carry out such purposes.

C. All employers and labor organizations doing business in the state shall furnish to the state directory of new hires a report that contains the name, address and the social security number of each newly hired or rehired employee and the name and address of and identifying number assigned under Section 6109 of the Internal Revenue Code of 1986 to the employer.

D. An employer in the state who also employs persons in another state and who transmits reports magnetically or electronically must designate one state in which the

employer has employees to which the employer will transmit the report. Any employer who transmits reports pursuant to this paragraph shall notify the state directory of new hires in writing as to which state such employer designates for the purpose of sending reports.

E. Any department, agency or instrumentality of the United States government shall comply with the provisions of this section by transmitting the report described in Subsection C of this section to the national directory of new hires.

F. Each employer and labor organization as defined above shall report to the state directory of new hires not later than twenty days after the date the employer hires the employee; or in the case of an employer transmitting reports magnetically or electronically, by two monthly transmissions if necessary not less than twelve days nor more than sixteen days apart.

G. Each report shall be made on a W-4 form or, at the option of the employer, an equivalent form and may be transmitted by first class mail, magnetically or electronically.

H. The labor department shall furnish to the state directory of new hires wage and claim information as defined in Section 303(h)(3) of the Social Security Act.

I. The department shall reimburse the labor department for all costs incurred in furnishing the information. The state directory of new hires shall make available to state public assistance agencies responsible for administering a program specified in Section 1137(b) of the Social Security Act information reported by employers for purposes of verifying eligibility for the program or investigating fraud.

J. The state directory of new hires shall make available to the state agencies operating employment security and workers' compensation programs access to information reported by employers for the purposes of administering such programs or investigating fraud.

History: Laws 1997, ch. 237, § 4.

ANNOTATIONS

Cross references. — For Title IV-D of the federal Social Security Act, *see* 42 U.S.C. § 651 et seq.

For Section 303(h)(3) of the Social Security Act, *see* 42 U.S.C. § 503(h)(3).

For Section 1137(b) of the Social Security Act, *see* 42 U.S.C. § 1320b-7(b).

For Section 6109 of the federal Internal Revenue Code, *see* 26 U.S.C. § 6109.

50-13-4. Penalties.

The state Title IV-D agency shall impose a civil money penalty of twenty dollars ($20.00) on employers for each instance of failure to comply with the provisions of this section, unless the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, in which case the penalty shall be five hundred dollars ($500) on the employer for each instance. The human services department shall establish an appeals process for employers penalized under this section.

History: Laws 1997, ch. 237, § 5.

ARTICLE 14
Workforce Development

50-14-1. Short title.

Chapter 50, Article 14 NMSA 1978 may be cited as the "Workforce Development Act".

History: Laws 1999, ch. 260, § 1; 2005, ch. 111, § 3.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

The 2005 amendment, effective April 4, 2005, specified the NMSA 1978 reference for the Workforce Development Act.

50-14-1.1. Purpose.

The purpose of the Workforce Development Act is to coordinate and maximize the effectiveness of workforce programs in New Mexico regardless of funding sources or primary administrative responsibilities.

History: Laws 2005, ch. 111, § 9.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Effective dates. — Laws 2005, ch. 111, 26 made Laws 2005, ch. 111, § 9 effective April 4, 2005.

50-14-2. Definitions.

As used in the Workforce Development Act [9-26-1 to 9-26-14 NMSA 1978]:

A. "board" means the state workforce development board;

B. "chief elected official" means the chief elected executive officer of a unit of general local government in a local area and in a case in which a local area includes more than one unit of general local government, "chief elected official" means the person designated under the agreement described in Section 117 (c)(1)(B) of the federal Workforce Investment Act of 1998;

C. "employment training program" means a program or a part of a program, regardless of which state or local agency administers it, that has as its primary purpose assisting persons in obtaining or enhancing employment;

D. "local board" means a local workforce development board; and

E. "office" or "division" means the workforce transition services division of the workforce solutions department.

History: Laws 1999, ch. 260, § 2; 2005, ch. 111, § 4; 2007, ch. 200, § 18.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Cross references. — For the federal Workforce Investment Act of 1998, *see* 29 U.S.C. § 2801 et seq.

The 2007 amendment, effective July 1, 2007, defined "division" as the workforce transition services division of the workforce solutions department.

The 2005 amendment, effective April 4, 2005, deleted the definition of "job corps" in former Subsection C; added the definition of "employment training program" in Subsection C; deleted the definitions of "person" and "representative business" in former Subsections E and F respectively; and added the definition of "office" in Subsection E.

50-14-3. State workforce development board.

A. The "state workforce development board" is created. The board consists of members appointed as provided in the federal Workforce Investment Act of 1998.

B. Appointments of members shall have taken into consideration gender, ethnicity and geographic diversity.

C. A vacancy on the board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

D. All terms of the public members shall be for four years.

E. The governor shall appoint one of the business representatives as chairman of the board.

F. The board shall meet at the call of the chair.

G. A majority of the board members constitutes a quorum.

H. Members are eligible to be paid pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

I. A member of the board may not vote on a matter under consideration by the board relating to provision of services by the member or by the entity the member represents, or that would provide direct financial benefit to the member or the member's immediate family, or engage in any other activity determined by the governor to be a conflict of interest as provided in the state plan prepared pursuant to the federal Workforce Investment Act of 1998.

History: Laws 1999, ch. 260, § 3; 2004, ch. 21, § 1; 2005, ch. 111, § 5.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Cross references. — For the federal Workforce Investment Act of 1998, *see* 29 U.S.C. § 2801 et seq.

The 2005 amendment, effective April 4, 2005, provided in Subsection A that members of the state workforce development board shall be appointed as provided in the federal Workforce Investment Act of 1998; deleted the list of members on the board in former paragraphs (1) through (4) and subparagraphs (a) through (j); deleted the requirement in Subsection B that the speaker of the house, the president pro tempore and the governor consider the listed factors in making appointment to the board; provided in Subsection D that the terms of public members shall be four years; and deleted the

requirement in former Subsection E that a majority of members of the board shall be representatives of business.

The 2004 amendment, effective May 19, 2004, amended Paragraph (4) (a), (b), (c) and (d) of Subsection A to permit cabinet secretaries to designate persons to serve on the state workforce development board.

50-14-4. Duties of the board.

A. The board shall assist the governor in:

(1) developing a five-year state plan that shall be updated annually and revised in accordance with the requirements of the federal Workforce Investment Act of 1998;

(2) developing and improving the statewide activities funded pursuant to the workforce investment system and the one-stop delivery system, including development of linkages to ensure coordination and nonduplication among the programs and activities described in the federal Workforce Investment Act of 1998;

(3) reviewing local plans;

(4) commenting annually on the measures taken pursuant to Section 113(b)(14) of the federal Carl D. Perkins Vocational and Applied Technology Education Act;

(5) developing allocation formulas for adult and youth employment training program funds to local areas in accordance with the federal Workforce Investment Act of 1998;

(6) developing comprehensive state performance measures to assess the effectiveness of workforce investment activities pursuant to the federal Workforce Investment Act of 1998;

(7) designating local workforce development areas;

(8) developing the statewide employment statistics system; and

(9) preparing reports and applications required for submission to the federal government.

B. The board shall also:

(1) review, evaluate and report annually on the performance of all workforce development activities administered by state agencies involved with workforce development;

(2) develop linkages with the public education department and the commission on higher education to ensure coordination and nonduplication of vocational education, apprenticeship, adult education, employment training programs and vocational rehabilitation programs with other workforce development and training programs; and

(3) provide policy advice regarding the application of federal or state law that pertains to workforce development.

C. To assist the board in fulfilling its duties, it is authorized to establish committees, one of which shall be a "coordination oversight committee". Except as provided for the coordination oversight committee in Subsections D and E of this section, the board shall appoint committee members and assign duties to committees as the board deems appropriate. The chair of the board shall appoint committee chairs from among members of the board.

D. The coordination oversight committee shall consist of the secretaries of economic development, human services, labor and public education; a representative from community colleges; a representative from the commission on higher education; a representative of labor; two legislators from different political parties, one from the senate and one from the house of representatives; the director of the office; and the committee chair.

E. The duties of the coordination oversight committee include the following:

(1) the secretaries of economic development, labor and human services shall propose five-, ten- and fifteen-year regional and statewide strategic plans for employment growth and training in New Mexico for the committee's consideration and possible recommendation for approval to the board as part of the state plan;

(2) the secretary of public education and the representative from the commission on higher education shall propose appropriate education plans for secondary education that address the strategic plans proposed by the secretaries of economic development, human services and labor for the committee's consideration and possible recommendation for approval to the board as part of the state plan;

(3) the committee's proposals to the board shall facilitate a career pathways culture and, at a minimum, include reference to foundation skills as developed by the United States secretary of labor's commission on achieving necessary skills, a job analysis that the economic development department shall produce after consultation with incumbent workers and employers, an available skills assessment and training targets;

(4) the board member from the community colleges shall solicit input from the community college constituency and work with regional and statewide businesses and other partners and the economic development department to create career pathways

and align curriculum and facilitate plans with the economic development department, human services department and labor department strategic plans;

(5) the committee shall, after consultation with the state chief information officer, develop and propose strategies for coordination of information technology for the purposes of providing participants access to all appropriate state services; collecting and managing data to allow reporting and analysis of uniform performance data related to all appropriate employment training programs; and sharing and integrating appropriate workforce data across agencies and appropriate nongovernmental partners for identifying needs, setting policy and coordinating strategies;

(6) the committee shall recommend for the board's approval the coordination of program designs to avoid duplication or unproductive segmentation of services; and

(7) the committee shall recommend for the board's approval the coordination of state agency efforts to progress toward comprehensive, customer-driven one-stop centers through co-location of mandatory and recommended partner service delivery points for workforce development.

F. All state agencies involved in workforce development activities shall annually submit to the board for its review and potential inclusion in the five-year plan their goals, objectives and policies. The plan shall include recommendations to the legislature on the modification, consolidation, initiation or elimination of workforce training and education programs in the state.

History: Laws 1999, ch. 260, § 4; 2005, ch. 111, § 6.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Cross references. — For the federal Workforce Investment Act of 1998, *see* 29 U.S.C. § 2801 et seq.

For the Carl D. Perkins Vocational and Applied Technology Education Act, *see* 20 U.S.C. § 2301 et seq.

The 2005 amendment, effective April 4, 2005, provided in Subsection B(2) that the state workforce development board develop linkages with the public education department and the commission on higher education to insure coordination and nonduplication of employment training programs; added Subsection C to provide that the board is authorized to establish committees, one of which shall be a coordination oversight committee, and that the chairman of the board shall appoint committee chairs; added Subsection D to specify the composition of members of the coordination

oversight committee; and added Subsection E to specify the duties of the coordination oversight committee.

50-14-5. Local workforce development areas; local boards; duties and responsibilities.

A. The governor shall designate specified local workforce development areas based on population and geographic configuration and consistent with provisions of the federal Workforce Investment Act of 1998 upon recommendation of the board and consideration of needs expressed by chief elected officials, business, labor and other interested parties.

B. The chief elected officials of each workforce development area shall establish a local board and appoint members based on the criteria established by the governor, the board and the federal Workforce Investment Act of 1998.

C. Each local board shall:

(1) advise the board on issues relating to regional and local workforce development needs;

(2) develop and submit to the board and the office a local five-year workforce plan that shall be updated and revised annually in accordance with requirements of the federal Workforce Investment Act of 1998;

(3) designate or certify one-stop program operators in accordance with the federal Workforce Investment Act of 1998;

(4) terminate, for cause, the eligibility of one-stop operators;

(5) select and provide grants to youth activity providers in accordance with the federal Workforce Investment Act of 1998;

(6) identify eligible training and intensive service providers in accordance with the federal Workforce Investment Act of 1998;

(7) develop a budget subject to the approval of the chief elected official;

(8) develop and negotiate local performance measurements as described in the federal Workforce Investment Act of 1998 with the chief elected official and the office;

(9) assist in development of an employment statistics system;

(10) ensure linkages with economic development activities;

(11) encourage employer participation and assist employers in meeting hiring needs;

(12) in partnership with the chief elected official, conduct oversight of local programs of youth activities authorized pursuant to the federal Workforce Investment Act of 1998 and employment and training activities pursuant to that act, and the one-stop delivery system in the local area;

(13) if required by the federal Workforce Investment Act of 1998, or if not required, at the local board's discretion, establish as a subgroup a youth council, appointed by the local board in cooperation with the chief elected official;

(14) prior to submission of the local plan, provide information regarding the following:

(a) the local plan;

(b) membership;

(c) designation and certification of one-stop operators; and

(d) the award of grants or contracts to eligible providers of youth activities;

(15) approve employment training programs directly linked to occupations in demand in the local area in order to provide for self-sufficiency;

(16) approve employment training programs linked to sectors of the economy or industry clusters that have a high potential for sustained demand or growth;

(17) annually review the performance of employment training programs for the purposes of renewing or canceling their certifications;

(18) report to the office and the board quarterly on the progress and overall effectiveness of one-stop operator performance as set forth in rules promulgated by the office; and

(19) report to the office and the board quarterly on the progress and effectiveness of the provision of services to employers, including a needs assessment for local business communities.

D. The local board shall be appointed in accordance with criteria established by the office with a minimum of fifty-one percent of its members coming from the private sector and shall include representation of education, labor, government, economic development and community-based organizations and others as appropriate and shall be appointed or ratified by the local chief public official.

E. Nothing in the Workforce Development Act shall be construed to provide a local board with the authority to mandate curricula for schools.

F. A member of the local board may not vote on a matter under consideration by the local board relating to provision of services by the member or by the entity the member represents, or that would provide direct financial benefit to the member or the member's immediate family, or engage in an activity determined by the governor to be a conflict of interest as provided in the state plan prepared pursuant to the federal Workforce Investment Act of 1998.

History: Laws 1999, ch. 260, § 5; 2005, ch. 111, § 7.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Cross references. — For the federal Workforce Investment Act of 1998, *see* 29 U.S.C. § 2801 et seq.

The 2005 amendment, effective April 4, 2005, provided in Subsection C(2) that the local boards shall develop and submit to the board and the office of workforce training and development, rather than to the governor, a local five-year workforce plan; provided in Subsection C(8) that the local board shall develop and negotiate local performance measures with the chief elected official and the office of workforce training and development, rather than to the governor; and provided in Subsection C(13) that if required by the federal Workforce Investment Act of 1998 or if not required by the federal act, then in the local board's discretion, the local board may establish a youth council; added Subsections C(15) through (19) to require local boards to approve employment training programs that are linked to occupations in demand in the local area and to sectors of the economy or industry clusters that have a high potential for sustained demand or growth and to report to the office of workforce training and development and the board progress and effectiveness of one-stop operator performance and the provision of services to employers; and provided in Subsection D that local boards shall be appointed in accordance with criteria established by the office of workforce training and development, rather than to the governor.

50-14-6. Youth councils; membership; duties.

A. The provisions of this section apply to the extent required by the federal Workforce Investment Act of 1998.

B. The membership of each youth council shall include:

(1) members of the local board with interest or expertise in youth policy; representatives of youth service agencies, including juvenile justice and law enforcement agencies; and representatives of local public housing;

(2) parents of eligible youth seeking assistance;

(3) persons, including former participants as defined pursuant to the New Mexico Works Act [Chapter 27, Article 2B NMSA 1978], and representatives of organizations, that have experience relating to youth activities;

(4) representatives of job corps, as appropriate; and

(5) other persons that the chairman of the local board, in cooperation with the chief elected official, determines to be appropriate.

C. Members of the youth council who are not members of the local board shall be voting members of the youth council and nonvoting members of the local board.

D. The duties of the youth council shall include:

(1) developing the portions of the local plan relating to eligible youth, as determined by the chairman of the local board;

(2) recommending eligible youth providers to the local board;

(3) conducting oversight of eligible providers of youth activities and coordinating youth activities authorized pursuant to the federal Workforce Investment Act of 1998 subject to the approval of the local board; and

(4) performing other duties as determined to be appropriate by the chairman of the local board.

E. A member of a local board or youth council may not vote on a matter under consideration by the local board regarding the provision of services by the member or by an entity that the member represents or that would provide direct financial benefit to the member or the immediate family of the member engaged in any activity determined by the governor to constitute a conflict of interest as specified in the state plan prepared pursuant to the federal Workforce Investment Act of 1998.

History: Laws 1999, ch. 260, § 6; 2005, ch. 111, § 8.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Cross references. — For the federal Workforce Investment Act of 1998, *see* 29 U.S.C. § 2801 et seq.

The 2005 amendment, effective April 4, 2005, provided in Subsection A that Section 50-14-6 NMSA 1978 applies to the extent required by the federal Workforce Investment Act of 1998.

50-14-7. Repealed.

History: Laws 1999, ch. 260, § 7; repealed by Laws 2005, ch. 111, § 24.

ANNOTATIONS

Repeals. — Laws 2005, ch. 111, § 24, repealed 50-14-7 NMSA 1978, as enacted by Laws 1999, ch. 260, § 7, relating to funding and personnel, effective April 4, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

50-14-8. Legislative powers.

Any money received by the state pursuant to the federal Workforce Investment Act of 1998 shall be subject to appropriation by the legislature consistent with the terms and conditions required by that act.

History: Laws 1999, ch. 260, § 8.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Cross references. — For the federal Workforce Investment Act of 1998, *see* 29 U.S.C. § 2801 et seq.

Effective dates. — Laws 1999, ch. 260, § 9, made the Workforce Development Act effective July 1, 2000.

50-14-9. Workforce transition services division.

A. The "workforce transition services division" is created in the workforce solutions department.

B. The division shall be the recipient of all grants from the United States pursuant to the federal Workforce Investment Act of 1998 and shall disburse those grants consistent with that act and the Workforce Development Act [Chapter 50, Article 14 NMSA 1978].

C. The division shall administer the provisions of the Workforce Development Act and is the governor's designee for the state with authority to administer New Mexico's program pursuant to the federal Workforce Investment Act of 1998. In performance of that duty and the duties set forth in Section 50-14-10 NMSA 1978, the division has the general power to:

(1) sue and, subject to the provisions of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], be sued;

(2) enter into contracts, joint powers agreements and other contracts for workforce development services and administer related programs with other state agencies; local governments; state institutions of higher learning; Indian nations, tribes or pueblos; regional provider networks; and corporations authorized to do business in the state;

(3) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which the division is responsible and to enforce those orders and instructions by appropriate administrative actions or actions in courts;

(4) promulgate, following the procedure in Subsection E of Section 9-1-5 NMSA 1978, reasonable rules necessary to carry out the duties of the division; and

(5) take all other actions necessary to meet the purposes of the Workforce Development Act.

History: Laws 2005, ch. 111, § 10; 2007, ch. 200, § 19.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Cross references. — For the Workforce Investment Act of 1998, *see* 29 U.S.C. Sections 28901 et seq..

The 2007 amendment, effective July 1, 2007, created the workforce transition services division in the workforce solutions department and eliminated the appointment of a director by the governor and the authority of the director to employ technical and administrative staff.

50-14-10. Division; duties.

The division shall:

A. provide technical, administrative and fiscal agent support to the board;

B. develop a unified, comprehensive plan for streamlining and integrating employment training programs, including the consolidation of all employment training programs, into the division. The division shall report annually to the governor and the legislature generally the progress and effectiveness of the workforce development system no later than September 1;

C. develop a performance-based system of accountability for employment training programs, including the board, local boards, one-stop centers and training providers, which system shall include key performance benchmarks to be used to monitor and assess performance;

D. monitor compliance with performance-based and coordination standards, including such standards as the division establishes by rule, with approval of the board, or that the board has adopted in the state plan, for the state's employment training programs regardless of funding source or the administrative agency that receives the funds. In performing this duty, the division:

(1) may issue subpoenas to appear and answer questions or produce documents;

(2) may investigate substantial allegations of improper financial or program activities;

(3) shall submit compliance reports to the governor; and

(4) shall, with approval of the governor, issue such corrective action orders as are necessary to enforce compliance, including orders that suspend funding for employment training programs or that transfer the programs to another agency;

E. promote the active participation and partnership with community colleges wherever possible throughout the state, which shall include the use of community colleges in creating career pathways and the use of available partnership incentives with local boards to use community college facilities for one-stop locations, co-location opportunities and specifically designed training programs; and

F. provide oversight and technical support for local boards to assist them in achieving independence and meeting performance standards while implementing statewide goals and directions.

History: Laws 2005, ch. 111, § 11; 2007, ch. 200, § 20.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

The 2007 amendment, effective July 1, 2007, eliminated the provision that prohibits the office from participating in one-stop services and the provision that prohibits the office from administering the unemployment compensation program and federal programs.

50-14-11. Skills council.

The chair of the board and the chairs of each of the local boards shall appoint one member from each of their respective bodies to form an ad hoc skills council that shall identify state and regional industry clusters for the coordination oversight committee of the board for the purposes of developing coordinated, targeted workforce training programs.

History: Laws 2005, ch. 111, § 12.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Effective dates. — Laws 2005, ch. 111, 26 made Laws 2005, ch. 111, § 12 effective April 4, 2005.

50-14-12. Cooperation with federal government; agency designation.

A. The office may cooperate with the federal government in the administration of employment training and public assistance programs in which financial or other participation by the federal government is authorized or mandated under federal laws, rules or orders.

B. The office, on behalf of the governor, may enter into agreements with agencies of the federal government to implement employment training and public assistance programs subject to availability of appropriated state funds and any provisions of state laws applicable to the agreements or participation by the state.

C. The governor may designate the office or any agency as the single state agency for the administration of an employment training program, either by the governor's own discretion or when the designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order; provided, however, that no designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

History: Laws 2005, ch. 111, § 13.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Effective dates. — Laws 2005, ch. 111, 26 made Laws 2005, ch. 111, § 13 effective April 4, 2005.

50-14-13. Agency cooperation.

Notwithstanding any other provision of law, all agencies, institutions and political subdivisions of the state that administer employment training or public assistance programs shall, consistent with state and federal statutes, cooperate with the office in the exercise of its coordination and inspection authority.

History: Laws 2005, ch. 111, § 14.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Effective dates. — Laws 2005, ch. 111, 26 made Laws 2005, ch. 111, § 14 effective April 4, 2005.

50-14-14. Temporary provision; transfer of personnel, appropriations, equipment, supplies, records, money and contracts.

On the effective date of this act:

A. all staff positions and all money, appropriations, records, furniture, equipment, supplies and other property belonging to the labor department or the job training division on the effective date of this act and funded or purchased by federal Workforce Investment Act of 1998 grants are transferred to the office of workforce training and development. The labor department shall produce an accounting of all staff positions funded and property purchased in any part by such grants. For those staff positions and items of property that the grants partially funded or purchased, the labor department shall transfer sufficient full-time-equivalent positions, money or property of sufficient value to the office of workforce training and development to achieve a complete transition to the office of workforce training and development;

B. all existing contracts, agreements and other obligations in effect for the labor department or the job training division and funded by federal Workforce Investment Act of 1998 grants shall be binding on the office of workforce training and development;

C. all pending cases, legal actions, appeals and other legal proceedings and all pending administrative proceedings that involve the labor department or the job training division and arise out of administration or enforcement of the federal Workforce Investment Act of 1998 or the Workforce Development Act shall be unaffected and shall continue in the name of the office of workforce training and development;

D. all rules, orders and other official acts of the labor department or the job training division arising out of the administration and enforcement of the federal Job Training Partnership Act, the federal Workforce Investment Act of 1998 and the Workforce Development Act shall continue in effect until amended, replaced or repealed by the office of workforce training and development; and

E. all references in law, rules, orders and other official acts to the labor department or the job training division and related to the administration and enforcement of the federal Workforce Investment Act of 1998 or the Workforce Development Act shall be construed to be references to the office of workforce training and development.

History: Laws 2005, ch. 111, § 22.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Effective dates. — Laws 2005, ch. 111, 26 made Laws 2005, ch. 111, § 22 effective April 4, 2005.

50-14-15. Temporary provision; transfer of personnel, appropriations, equipment, supplies, records, money and contracts for the Individual Development Account Act.

A. On July 1, 2005, all staff positions and all money, appropriations, records, furniture, equipment, supplies and other property of the local government division of the department of finance and administration used to administer the Individual Development Account Act [Chapter 58, Article 30 NMSA 1978] are transferred to the office of workforce training and development. All federal program grants and fund allocations or other payments made to the local government division for the Individual Development Account Act shall be transferred to the office of workforce training and development and shall not be commingled with other funds of the office or be used for any other purpose except for administration of the programs for which these funds were granted.

B. All existing contracts and agreements in effect pertaining to the local government division of the department of finance and administration's administration of the Individual Development Account Act shall be binding and effective on the office of workforce training and development.

C. The rules, orders and decisions of the local government division of the department of finance and administration pertaining to the Individual Development Account Act in effect on June 30, 2005 shall remain in effect until repealed or amended.

History: Laws 2005, ch. 111, § 23.

ANNOTATIONS

Repeals. — Section 50-14-16 NMSA 1978 provided for the delayed repeal of the Workforce Development Act, effective July 1, 2012. Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, effective July 1, 2007.

Effective dates. — Laws 2005, ch. 111, 26 made Laws 2005, ch. 111, § 23 effective April 4, 2005.

50-14-16. Repealed.

History: Laws 2005, ch. 111, § 25; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 50-14-16 NMSA 1978, as enacted by Laws 2005, ch. 111, § 25, relating to the delayed repeal of the Workforce Development Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

ARTICLE 14A
Rapid Workforce Development

50-14A-1. Short title. (Repealed effective July 1, 2024.)

This act [50-14A-1 to 50-14A-7 NMSA 1978] may be cited as the "Rapid Workforce Development Act".

History: Laws 2016, ch. 23, § 1.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 23, § 8 made the Rapid Workforce Development Act effective July 1, 2016.

Delayed repeals. — For delayed repeal of this section, *see* 50-14A-7 NMSA 1978.

50-14A-2. Purpose. (Repealed effective July 1, 2024.)

The purpose of the Rapid Workforce Development Act is to provide resources to quickly establish or expand programs in the state's institutions of higher education to train and educate New Mexico's workers for employment with:

A. existing New Mexico employers that expand their workforce; and

B. employers that establish operation in New Mexico and create new jobs for New Mexicans.

History: Laws 2016, ch. 23, § 2.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 23, § 8 made the Rapid Workforce Development Act effective July 1, 2016.

Delayed repeals. — For delayed repeal of this section, *see* 50-14A-7 NMSA 1978.

50-14A-3. Definitions. (Repealed effective July 1, 2024.)

As used in the Rapid Workforce Development Act:

A. "board" means the rapid workforce development board;

B. "employer" means an individual, corporation, federally chartered corporation, limited liability company, partnership, nonprofit organization, joint venture, syndicate, association or Indian nation, tribe or pueblo that:

(1) currently transacts business in New Mexico and wishes to increase the number of people that it employs; or

(2) has chosen New Mexico as a location in which it will transact business and hire employees;

C. "fund" means the rapid workforce development fund;

D. "member" means a member of the board; and

E. "workforce" means those people who are currently engaged in or trained for employment.

History: Laws 2016, ch. 23, § 3.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 23, § 8 made the Rapid Workforce Development Act effective July 1, 2016.

Delayed repeals. — For delayed repeal of this section, *see* 50-14A-7 NMSA 1978.

50-14A-4. Rapid workforce development board created; membership. (Repealed effective July 1, 2024.)

The "rapid workforce development board" is created. The board is administratively attached to the economic development department and consists of the:

A. secretary of economic development or the secretary's designee;

B. secretary of higher education or the secretary's designee; and

C. secretary of workforce solutions or the secretary's designee.

History: Laws 2016, ch. 23, § 4.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 23, § 8 made the Rapid Workforce Development Act effective July 1, 2016.

Delayed repeals. — For delayed repeal of this section, *see* 50-14A-7 NMSA 1978.

50-14A-5. Rapid workforce development fund created. (Repealed effective July 1, 2024.)

The "rapid workforce development fund" is created in the state treasury. The fund consists of appropriations and money otherwise accruing to the fund. Money in the fund is subject to appropriation by the legislature to the economic development department for use as provided in Section 6 [50-14A-6 NMSA 1978] of the Rapid Workforce Development Act. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or the secretary's authorized representative. Any balance remaining in the fund at the end of a fiscal year shall not revert to the general fund.

History: Laws 2016, ch. 23, § 5.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 23, § 8 made the Rapid Workforce Development Act effective July 1, 2016.

Delayed repeals. — For delayed repeal of this section, *see* 50-14A-7 NMSA 1978.

50-14A-6. Board member powers and duties. (Repealed effective July 1, 2024.)

A. Members are entitled to be reimbursed pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance for service on the board.

B. The secretary of economic development shall:

(1) identify employers;

(2) work with an employer to determine:

(a) the number of New Mexico workers that the employer will employ when it begins to transact business in New Mexico or when it increases the number of workers it already employs in New Mexico; and

(b) the job skills, education and training those workers will require to obtain employment with the employer; and

(3) upon identification of an employer and determination of the employer's workforce needs, as provided in Paragraph (2) of this subsection, convene a meeting of the board.

C. The secretary of workforce solutions shall provide, with respect to an employer identified by the secretary of economic development:

(1) demographic information about the relevant workforce in New Mexico; and

(2) information about relevant workforce education and training opportunities that are available throughout New Mexico, including opportunities offered by or in connection with state post-secondary educational institutions.

D. The secretary of higher education shall provide, with respect to an employer's workforce needs, information about state post-secondary educational institutions through which relevant training and education could be delivered.

E. At a meeting of the board, the members shall:

(1) consider how an employer's plan to begin transacting business in New Mexico or to increase the number of people employed by the employer's New Mexico

business would contribute to job creation, employment and economic development in New Mexico;

(2) consider the information provided pursuant to Subsections C and D of this section;

(3) consider whether money in the fund should be used to establish or support a program in a state post-secondary educational institution to train workers for prospective employment with the prospective employer; and

(4) upon unanimous agreement, authorize the secretary of economic development to use money in the fund to establish or support a program in a state post-secondary educational institution to train workers for prospective employment with the prospective employer.

History: Laws 2016, ch. 23, § 6.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 23, § 8 made the Rapid Workforce Development Act effective July 1, 2016.

Delayed repeals. — For delayed repeal of this section, *see* 50-14A-7 NMSA 1978.

50-14A-7. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board is terminated on July 1, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Rapid Workforce Development Act until July 1, 2024. Effective July 1, 2024, the Rapid Workforce Development Act is repealed.

History: Laws 2016, ch. 23, § 7.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 23, § 8 made the Rapid Workforce Development Act effective July 1, 2016.

ARTICLE 15
Day Laborer

50-15-1. Short title.

Sections 1 through 7 [5-15-1 to 5-15-7 NMSA 1978] of this act may be cited as the "Day Laborer Act".

History: Laws 2005, ch. 257, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

50-15-2. Definitions.

As used in the Day Laborer Act:

A. "check cashing service" means a business that for a fee offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments;

B. "day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional or irregular and that is for a limited time period;

C. "day labor service agency" means an entity, including a labor broker or labor pool, that provides day laborers to third-party employers and that charges the third-party employer for the service of providing day laborers for employment offered by the employer;

D. "day laborer" means a person who contracts for day labor employment with a day labor service agency;

E. "department" means the workforce solutions department;

F. "office worker" means a person employed to perform clerical, secretarial or other semiskilled or skilled work that is predominantly performed in an office setting;

G. "payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked; and

H. "third-party employer" means a person that contracts with a day labor service agency for the employment of day laborers.

History: Laws 2005, ch. 257, § 2; 2007, ch. 200, § 21.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed the reference from the labor department to the workforce solutions department.

50-15-3. Exemptions.

The following agencies that provide employees on a short-term or otherwise temporary basis are exempted from complying with the provisions of the Day Laborer Act:

A. business entities registered as farm labor contractors;

B. temporary services employment agencies where advanced applications, a screening process and job interviews are required;

C. a labor union hiring hall; and

D. a labor bureau or employment office operated by a business entity for the sole purpose of employing a person for its own use.

History: Laws 2005, ch. 257, § 3.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

50-15-4. Day labor service agency; third-party employer; duties.

A. A day labor service agency shall compensate day laborers for work performed by providing or making available commonly accepted payment instruments that are payable in cash, on demand, at a financial institution.

B. At the time of payment of wages, a day labor service agency shall provide each day laborer with an itemized statement showing in detail each deduction made from wages.

C. In no event shall deductions made by a day labor service agency, other than those required by federal or state law, reduce a day laborer's wages below federal minimum wage for the hours worked.

D. A day labor service agency shall not restrict the right of a day laborer to accept a permanent position with a third-party employer to whom the day laborer has been referred for work or restrict the right of a third-party employer to offer employment to a day laborer.

E. A day labor service agency may collect a reasonable placement fee from a third-party employer.

History: Laws 2005, ch. 257, § 4.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

50-15-5. Check cashing; notice of fees.

A. A check cashing service that is a day labor service agency or is operating within the office of a day labor service agency shall not charge a day laborer an amount in excess of two dollars ($2.00) for cashing a check or payment instrument that is issued by the agency.

B. No fees may be charged for cashing a check or payment instrument unless the day laborer:

(1) is given the option of being paid with a check or payment instrument that is payable without a fee at a local financial institution; and

(2) voluntarily elects to cash the check or payment instrument at the day labor service agency or at a check cashing service operating within the office of the day labor service agency.

C. A day labor service agency or a check cashing service that is a day labor service agency or is operating within the office of a day labor service agency shall post notices in the area where cashing of checks or payment instruments occurs. The notices shall be clearly visible and easily readable and shall state the fee for cashing a check or payment instrument. Notices shall be posted in English, Spanish and any other written language where a high percentage of the workers speak that language. In areas where the day labor service agency employs Navajo workers and the check cashing service cashes checks of Navajo workers, notice shall be posted in Navajo.

History: Laws 2005, ch. 257, § 5.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

50-15-6. Payment for all work required; records; enforcement.

A. A day labor service agency shall pay a day laborer for all hours worked or otherwise due and owed to the day laborer. Failure to pay for each day and all hours worked is a violation of the Day Laborer Act. A person who fails to pay a day laborer for work performed or time due is liable for full payment of the wages not paid and civil damages equal to twice the value of the unpaid wages, court costs and attorney fees and costs.

B. A day labor service agency shall maintain true and accurate records of the day laborers employed and of the hours worked and wages paid to the day laborers for at least one year after the entry of the record.

C. The department shall investigate complaints and enforce the provisions of the Day Laborer Act.

D. The department shall adopt rules necessary to implement the Day Laborer Act.

History: Laws 2005, ch. 257, § 6.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

50-15-7. Violations; misdemeanor; penalties.

A. A person who violates the provisions of the Day Laborer Act:

(1) on a first offense, is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978; and

(2) for a second and subsequent offense, is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 and shall be fined no less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000) for each offense for which the person is convicted, which fine shall not be suspended, deferred or taken under advisement.

B. In addition to any other fees or fines that may be imposed on an offender convicted pursuant to this section, the court may order the offender to pay restitution pursuant to Section 31-17-1 NMSA 1978.

C. Each occurrence of a violation for which a person is convicted is a separate offense. Multiple violations arising from transactions with the same person or multiple violations arising from transactions with different people shall be considered separate occurrences.

History: Laws 2005, ch. 257, § 7.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 257 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

ARTICLE 16
Caregiver Leave

50-16-1. Short title.

Sections 1 through 4 [50-16-1 to 50-16-4 NMSA 1978] of this act may be cited as the "Caregiver Leave Act".

History: Laws 2019, ch. 177, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

50-16-2. Definitions.

As used in the Caregiver Leave Act:

A. "eligible employee" means, except as provided pursuant to Section 4 of the Caregiver Leave Act, an individual who is in the employ of an employer and who, in accordance with the employer's policies, is eligible to accrue sick leave;

B. "employer" means a person that employs one or more employees and that offers eligible employees sick leave;

C. "family member" means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle of an eligible employee; and

D. "sick leave" means a leave of absence from employment for which an employer pays an eligible employee due to illness or injury or to receive care from a licensed or certified health professional. "Sick leave" does not include leave to which an employee is entitled under the federal Family and Medical Leave Act of 1993, regardless of whether the employee uses sick leave during that leave.

History: Laws 2019, ch. 177, § 2.

ANNOTATIONS

Cross references. — For the federal Family and Medical Leave Act of 1993, *see* 29 U.S.C. §§ 2601 et seq.

Effective dates. — Laws 2019, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

50-16-3. Accumulated sick leave; application to family caregiving.

A. An employer that provides eligible employees with sick leave for an eligible employee's own illness or injury or to receive health care shall permit its eligible employees to use accrued sick leave to care for their family members in accordance with the same terms and procedures that the employer imposes for any other use of sick leave by eligible employees.

B. An eligible employee's employer shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate in any manner, including using the employee's use of caregiver leave as a factor in the employee's performance evaluation, against an eligible employee because that employee requests or uses caregiver leave in accordance with the employer's general sick leave policy, files a complaint with the workforce solutions department for violation of the Caregiver Leave Act, cooperates in an investigation or prosecution of an alleged violation of the Caregiver Leave Act or opposes any policy or practice established pursuant to the Caregiver Leave Act.

C. Nothing in this section shall require an employer to provide sick leave to its employees.

D. The provisions of the Caregiver Leave Act are nonexclusive and cumulative and are in addition to any other rights or remedies afforded by contract or under other provision of law. The Caregiver Leave Act does not prohibit an employer from providing greater sick leave benefits than are provided pursuant to that act.

E. The secretary of workforce solutions shall adopt and promulgate rules to implement the provisions of the Caregiver Leave Act. These rules shall include, at a minimum, grievance procedures for according eligible employees recourse for violations of the Caregiver Leave Act.

History: Laws 2019, ch. 177, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

50-16-4. Exemptions.

A. The provisions of the Caregiver Leave Act shall not apply to:

(1) an employee of an employer subject to the provisions of Title II of the federal Railway Labor Act or to an employer or employee as defined in either the federal Railroad Unemployment Insurance Act or the Federal Employers' Liability Act or other comparable federal law; or

(2) any other employment expressly exempted under rules adopted by the workforce solutions department as necessary to implement the provisions of the Caregiver Leave Act in accordance with applicable state and federal law.

B. Nothing in the Caregiver Leave Act shall be construed to invalidate, diminish or otherwise interfere with any collective bargaining agreement, nor shall it be construed to invalidate, diminish or otherwise interfere with any party's power to collectively bargain for a collective bargaining agreement.

History: Laws 2019, ch. 177, § 4.

ANNOTATIONS

Cross references. — For the federal Railway Labor Act, *see* 15 U.S.C. §§ 21, 45; 18 U.S.C. § 373; 28 U.S.C. §§ 1291 to 1294 and 45 U.S.C. §§ 151 to 163, 181 to 188.

For the federal Railroad Unemployment Insurance Act, *see* 45 U.S.C. § 351 et seq.

For the Federal Employers' Liability Act, *see* 45 U.S.C. § 51 et seq.

Effective dates. — Laws 2019, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

ARTICLE 17
Healthy Workplaces

50-17-1. Short title.

This act [50-17-1 to 50-17-12 NMSA 1978] may be cited as the "Healthy Workplaces Act".

History: Laws 2021, ch. 131, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 1 effective July 1, 2022.

50-17-2. Definitions.

As used in the Healthy Workplaces Act:

A. "division" means the labor relations division of the workforce solutions department;

B. "domestic partner" means an individual with whom another individual maintains a household and a mutual committed relationship without a legally recognized marriage;

C. "earned sick leave" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to that employee for the purposes described in the Healthy Workplaces Act, but in no case shall the hourly rate be less than the applicable legally required minimum wage rate;

D. "employ" means suffer or permit to work;

E. "employee" means an individual employed by an employer for remuneration, including an individual employed on a part-time, seasonal or temporary basis; "employee" does not mean an employee of an employer subject to the provisions of Title II of the federal Railway Labor Act or an employee as defined in either the federal Railroad Unemployment Insurance Act or the Federal Employers' Liability Act;

F. "employer" means an individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting 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;

G. "family member" means an employee's spouse or domestic partner or a person related to an employee or an employee's spouse or domestic partner as:

(1) a biological, adopted or foster child, a stepchild or legal ward, or a child to whom the employee stands in loco parentis;

(2) a biological, foster, step or adoptive parent or legal guardian, or a person who stood in loco parentis when the employee was a minor child;

(3) a grandparent;

(4) a grandchild;

(5) a biological, foster, step or adopted sibling;

(6) a spouse or domestic partner of a family member; or

(7) an individual whose close association with the employee or the employee's spouse or domestic partner is the equivalent of a family relationship;

H. "health care professional" means a person licensed pursuant to federal or state law to provide health care services, including nurses, nurse practitioners, physician assistants, doctors and emergency room personnel;

I. "independent contractor" means a person who agrees to do certain work where the person who engages the contractor may direct the result to be accomplished but does not have the right to control the manner in which the details of the work are to be performed; and

J. "retaliation" means any threat, discharge, discipline, suspension, demotion, non-promotion, less favorable scheduling, reduction of hours or application of absence control policies that count an employee's use of earned sick leave as an absence that may lead to adverse action, or other adverse action against employees for the exercise of a right guaranteed pursuant to the Healthy Workplaces Act, including sanctions against an employee who is a recipient of benefits or rights pursuant to the Healthy Workplaces Act. "Retaliation" includes interference with or punishment for participating in an investigation, proceeding or hearing pursuant to the Healthy Workplaces Act.

History: Laws 2021, ch. 131, § 2.

ANNOTATIONS

Cross references. — For the federal Railway Labor Act, *see* 15 U.S.C. §§ 21, 45; 18 U.S.C. § 373; 28 U.S.C. §§ 1291 to 1294 and 45 U.S.C. §§ 151 to 163, 181 to 188.

For the federal Railroad Unemployment Insurance Act, *see* 45 U.S.C. § 351 et seq.

For the Federal Employers' Liability Act, *see* 45 U.S.C. § 51 et seq.

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 2 effective July 1, 2022.

50-17-3. Earned sick leave; use and accrual.

A. Employees shall accrue a minimum of one hour of earned sick leave for every thirty hours worked; provided that employers may choose a higher accrual rate; and provided further that an employer may instead elect to grant employees the full sixty-four hours of earned sick leave for the upcoming year on January 1 of each year or, for employees whose employment begins after January 1 of a given year, a pro rata portion of the sixty-four hours for use in the remainder of that year. Such employees shall not be entitled to use more than sixty-four hours of earned sick leave per twelve-month period, unless the employer selects a higher limit.

B. All employees shall accrue earned sick leave as follows:

(1) earned sick leave as provided in the Healthy Workplaces Act shall begin to accrue upon the latter of commencement of the employee's employment or the effective date of the Healthy Workplaces Act and may be used beginning on the latter of those dates;

(2) employees who are exempt from overtime requirements pursuant to the federal Fair Labor Standards Act of 1938, 29 U.S.C. Section 213(a)(1), shall be assumed to work forty hours in each work week for the purposes of earned sick leave accrual unless their normal work week is less than forty hours, in which case earned sick leave accrues based on their normal work week;

(3) accrued unused earned sick leave shall carry over from year to year, but an employer is not required to permit an employee to use more than sixty-four hours in a twelve-month period;

(4) nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned sick leave that has not been used;

(5) if an employee is transferred to a separate division, entity or location but remains employed by the same employer, the employee is entitled to all earned sick leave accrued at the prior division, entity or location and is entitled to use all earned sick leave as provided in this section. When there is a separation from employment, and the employee is rehired within twelve months of separation by the same employer, previously accrued earned sick leave that has not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned sick leave and accrue additional earned sick leave upon re-commencement of employment;

(6) when a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned sick leave accrued when employed by the original employer and are entitled to use all earned sick leave previously accrued as provided in this section;

(7) for purposes of this subsection, an employer may choose any one of the following methods for determining the twelve-month period in which the earned sick leave may be used:

(a) the calendar year;

(b) any fixed twelve-month leave year, such as a fiscal year, a year required by other law or a year starting on an employee's anniversary date;

(c) the twelve-month period measured forward from the date an employee's first use of earned sick leave occurs; or

(d) a rolling twelve-month period measured backward from the date an employee uses any earned sick leave; and

(8) for purposes of this subsection, "year to year" shall run concurrently with the twelve-month period elected by the employer.

C. An employee may use earned sick leave:

(1) for the employee's:

(a) mental or physical illness, injury or health condition;

(b) medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or

(c) preventive medical care;

(2) for care of family members of the employee for:

(a) mental or physical illness, injury or health condition;

(b) medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or

(c) preventive medical care;

(3) for meetings at the employee's child's school or place of care related to the child's health or disability; or

(4) for absence necessary due to domestic abuse, sexual assault or stalking suffered by the employee or a family member of the employee; provided that the leave is for the employee to:

(a) obtain medical or psychological treatment or other counseling;

(b) relocate;

(c) prepare for or participate in legal proceedings; or

(d) obtain services or assist a family member of the employee with any of the activities set forth in Subparagraphs (a) through (c) of this paragraph.

D. Earned sick leave shall be provided upon the oral or written request of an employee or an individual acting on the employee's behalf. When possible, the request shall include the expected duration of the sick leave absence.

E. When the use of earned sick leave is foreseeable, the employee shall make a reasonable effort to provide oral or written notice of the need for such sick leave to the employer in advance of the use of the earned sick leave and shall make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer. When the use of earned sick leave is not foreseeable, the employee shall notify the employer orally or in writing as soon as practicable.

F. An employer may not require, as a condition of an employee's taking earned sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned sick leave.

G. Earned sick leave may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

H. An employer shall not require an employee to use other paid leave before the employee uses sick leave pursuant to the Healthy Workplaces Act.

I. An employer's failure to provide earned sick leave based on the employer's misclassification of the employee as an independent contractor is a violation of the Healthy Workplaces Act.

History: Laws 2021, ch. 131, § 3.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 3 effective July 1, 2022.

50-17-4. More generous earned sick leave policy.

An employer with a paid time off policy that makes available an amount of earned sick leave sufficient to meet the accrual requirements of the Healthy Workplaces Act and that may be used for at minimum the same purposes and under the same terms and conditions as that act is deemed to be in compliance with that act. However, on the

effective date of the Healthy Workplaces Act, the sick leave required by that act shall be in addition to any paid time off provided by an employer pursuant to a collective bargaining agreement unless that paid time off provided may be used for the same purposes and under the same terms and conditions as the Healthy Workplaces Act.

History: Laws 2021, ch. 131, § 4.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 4 effective July 1, 2022.

50-17-5. Documentation.

A. Documentation shall not be required for sick leave, except an employer may require reasonable documentation that sick leave has been used for a covered purpose if the employee uses two or more consecutive work days of sick leave.

B. Documentation signed by a health care professional indicating the amount of earned sick leave taken is necessary shall be considered reasonable documentation for sick leave taken pursuant to the Healthy Workplaces Act. In cases of domestic abuse, sexual assault or stalking, an employee may choose to provide one of the following types of documentation, which shall be considered as reasonable documentation: a police report, a court-issued document or a signed statement from a victim services organization, clergy member, attorney, advocate, the employee, a family member of the employee or other person affirming that the sick leave was taken for one of the purposes set forth in Paragraph (4) of Subsection C of Section 3 [50-17-3 NMSA 1978] of the Healthy Workplaces Act. A signed statement required pursuant to this subsection may be written in the employee's native language and shall not be required to be in a particular format or notarized. An employer may not require the documentation to explain the nature of any medical condition or the details of the domestic abuse, sexual assault or stalking.

C. An employee shall provide documentation upon request to the employer in a timely manner. The employer shall not delay the commencement of earned sick leave on the basis that the employer has not yet received documentation.

D. All information an employer obtains related to an employee's reasons for taking sick leave shall be treated as confidential and not disclosed except with the permission of the employee or as necessary for validation purposes for insurance disability claims, accommodations consistent with the federal Americans with Disabilities Act of 1990, as required by the Healthy Workplaces Act or by court order.

History: Laws 2021, ch. 131, § 5.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 5 effective July 1, 2022.

50-17-6. Notice and posting requirements.

A. An employer shall give written or electronic notice to an employee at the commencement of employment of the following:

(1) the employee's right to earned sick leave;

(2) the manner in which sick leave is accrued and calculated;

(3) the terms of the use of earned sick leave as guaranteed by the Healthy Workplaces Act;

(4) that retaliation against employees for the use of sick leave is prohibited;

(5) the employee's right to file a complaint with the division if earned sick leave as required pursuant to the Healthy Workplaces Act is denied by the employer or if the employee is retaliated against; and

(6) all means of enforcing violations of the Healthy Workplaces Act.

B. Notice required pursuant to Subsection A of this section shall be in English, Spanish or any language that is the first language spoken by at least ten percent of the employer's workforce, as requested by the employee.

C. Employers shall display a poster that contains the information required pursuant to Subsection A of this section in a conspicuous and accessible place in each establishment where employees are employed. The poster displayed should be in English, Spanish and any language that is the first language spoken by at least ten percent of the employer's workforce.

D. The division shall create and make available to employers notices and posters in English, Spanish and any other languages deemed appropriate by the division that contain the information required pursuant to Subsection A of this section for employers' use in complying with the provisions of this section.

History: Laws 2021, ch. 131, § 6.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 6 effective July 1, 2022.

50-17-7. Employer shall retain documentation.

Employers shall retain for the immediately preceding forty-eight-month period records documenting hours worked by employees and earned sick leave taken by employees.

History: Laws 2021, ch. 131, § 7.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 7 effective July 1, 2022.

50-17-8. Exercise of rights protected; retaliation prohibited.

A. An employer shall not take or threaten any adverse action whatsoever against an employee:

(1) that is reasonably likely to deter such employee from exercising or attempting to exercise a right granted pursuant to the Healthy Workplaces Act; or

(2) because the employee:

(a) has exercised or attempted to exercise such rights;

(b) has reasonably alleged violations of the Healthy Workplaces Act; or

(c) has raised a concern about violations of the Healthy Workplaces Act to the employer, the employer's agent, other employees, a government agency or to the public through print, online, social or any other media.

B. An employer shall not attempt to require an employee to sign a contract or other agreement that would limit or prevent the employee from asserting rights provided for in the Healthy Workplaces Act or to otherwise establish a workplace policy that would limit or prevent the exercise of such rights. An employer's attempt to impose such a contract, agreement or policy shall constitute an adverse action enforceable pursuant to the Healthy Workplaces Act.

C. An employer shall not count use of sick leave in a way that will lead to discipline, discharge, demotion, non-promotion, less favorable scheduling, reduction of hours, suspension or any other adverse action.

History: Laws 2021, ch. 131, § 8.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 8 effective July 1, 2022.

50-17-9. Enforcement.

A. The division shall be authorized to coordinate implementation and enforcement of the Healthy Workplaces Act and shall promulgate appropriate rules to implement that act.

B. The division shall coordinate implementation and enforcement of the Healthy Workplaces Act, including:

(1) establishing a system to receive complaints, in writing and by telephone, regarding alleged violations of the Healthy Workplaces Act;

(2) establishing a process for investigating and resolving complaints in a timely manner and keeping complainants notified regarding the status of the investigation of their complaint;

(3) ensuring employer compliance with the Healthy Workplaces Act through the use of audits, investigations or other measures; and

(4) establishing a system for reviewing complaints.

C. The division shall maintain as confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The division shall, prior to such disclosure and to the extent practicable, notify a complainant that the division will be disclosing the complainant's identity.

History: Laws 2021, ch. 131, § 9.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 9 effective July 1, 2022.

50-17-10. Civil actions; time limits; burdens of proof.

A. A civil action may be filed in a court of competent jurisdiction for a violation of the Healthy Workplaces Act within three years from the date the alleged violation occurred; provided that the time limit to file a civil action established by this subsection shall be tolled during an investigation by the division of the violation or related violations by the same employer. A lack of an investigation by the division shall not act as a bar to a civil action brought by a complainant pursuant to the Healthy Workplaces Act.

B. The division, the office of the attorney general or a person or entity that has a member who has been affected by a violation of the Healthy Workplaces Act may bring a civil action for a violation of the Healthy Workplaces Act.

C. A civil action to enforce any provision of the Healthy Workplaces Act may be filed without first filing an administrative complaint with the division and may:

(1) encompass all violations that occurred after the effective date of the Healthy Workplaces Act as part of a continuing course of conduct, regardless of the date on which the violations occurred;

(2) be pursued by an employee on behalf of the employee or be pursued by an employee on behalf of other employees similarly situated; or

(3) be pursued by an agent or representative designated by an employee.

D. It shall not be a defense to any action brought pursuant to this section that the complaint was brought by or in regard to the employment of a worker who does not have evidence of having a legal presence in the United States.

E. The parties in a civil action regarding retaliation by an employer shall be subject to the following burdens of proof:

(1) when an employee presents a prima facie showing of retaliation, the employer shall then have the burden to establish a legitimate, non-retaliatory reason for the adverse employment action; and

(2) when an employer meets the burden of proof required by Paragraph (1) of this subsection, the employee shall then have the burden to establish that the reason cited by the employer was pretextual.

History: Laws 2021, ch. 131, § 10.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 10 effective July 1, 2022.

50-17-11. Employer liability.

A. An employer that violates the Healthy Workplaces Act shall be liable to the affected employee:

(1) for an instance of sick leave taken by an employee but unlawfully not compensated by the employer, in an amount equal to three times the wages that should have been paid or five hundred dollars ($500), whichever is greater;

(2) for an instance of sick leave requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned on

searching for or finding a replacement worker, in an amount equal to actual damages or five hundred dollars ($500), whichever is greater;

(3) for each instance of retaliation prohibited by the Healthy Workplaces Act excepting discharge from employment, in an amount equal to actual damages, including back pay, wages or benefits lost, an additional amount of two hundred fifty dollars ($250) and equitable relief such as rescission of disciplinary measures taken by the employer or other relief as determined by a court of law;

(4) for each instance of prohibited discharge from employment, in an amount equal to actual damages, including back pay, wages or benefits lost, an additional amount of five hundred dollars ($500) and reinstatement or other equitable relief as determined by a court of law;

(5) for each willful notice or recordkeeping violation, two hundred fifty dollars ($250); and

(6) for each misclassification of an employee as an independent contractor, actual damages or five hundred dollars ($500), whichever is greater.

B. A plaintiff prevailing in a legal action brought pursuant to the Healthy Workplaces Act shall recover all appropriate legal or equitable relief, the costs and expenses of suit and reasonable attorney fees. In an action brought by the division or the attorney general, any damages recovered shall be payable to the individual employees who experienced the violation.

History: Laws 2021, ch. 131, § 11.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 11 effective July 1, 2022.

50-17-12. Other legal requirements.

The Healthy Workplaces Act provides minimum requirements pertaining to earned sick leave and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy or standard, including collective bargaining agreements, that provides for greater accrual or use by employees of earned sick leave, whether paid or unpaid, or that extends other protections to employees.

History: Laws 2021, ch. 131, § 12.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 131, § 13 made Laws 2021, ch. 131, § 12 effective July 1, 2022.