

HOUSE BILL 589

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Al Park

AN ACT

RELATING TO PAYMENT OF WAGES; CHANGING THE TOLLING PERIOD FOR
CIVIL ACTIONS.

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

SECTION 1. Section 37-1-5 NMSA 1978 (being Laws 1947,
Chapter 44, Section 1, as amended) is amended to read:

"37-1-5. ACTIONS FOR WAGE AND HOUR VIOLATIONS.--A civil
action to enforce any provision of Chapter 50, Article 4 NMSA
1978 shall be commenced within three years after a violation
last occurs. The three-year period shall be tolled during a
labor relations division of the workforce solutions department
investigation of an employer, but such an investigation shall
not be deemed a prerequisite to a person bringing a civil
action, nor shall it operate to bar a civil action brought
pursuant to Chapter 50, Article 4 NMSA 1978. There shall be no

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1 tolling of the limitations period until such date that an
2 employer has been served with notice of the investigation
3 causing tolling of the limitations period."

4 SECTION 2. Section 50-4-26 NMSA 1978 (being Laws 1955,
5 Chapter 200, Section 5, as amended) is amended to read:

6 "50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

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

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

20 C. In addition to penalties provided pursuant to
21 this section, an employer who violates any provision of Section
22 50-4-22 NMSA 1978 shall be liable to the employees affected in
23 the amount of their unpaid or underpaid minimum wages plus
24 interest and, in the case of willful violations, in an
25 additional amount equal to twice the unpaid or underpaid wages.

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

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

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

20 **SECTION 3.** Section 50-4-32 NMSA 1978 (being Laws 2009,
21 Chapter 104, Section 2) is amended to read:

22 "50-4-32. CONTINUING COURSE OF CONDUCT.--A civil action
23 to enforce any provision of Chapter 50, Article 4 NMSA 1978 may
24 encompass all violations that occurred as part of a continuing
25 course of conduct regardless of the date on which they

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1 occurred, not to exceed a period of four years preceding the
2 date of the last violation."

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