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SENATE BILL 109

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO LABOR CONDITIONS; MAKING CHAPTER 50, ARTICLE 4 NMSA  
1978 GENDER-NEUTRAL; MAKING RELATED STYLE AMENDMENTS TO THE  
NMSA 1978.

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

**SECTION 1.** Section 50-4-1 NMSA 1978 (being Laws 1937,  
Chapter 109, Section 1) is amended to read:

"50-4-1. DEFINITIONS.--~~[(a) Whenever]~~ As used in [~~this~~  
~~act]~~ Sections 50-4-1 through 50-4-12 NMSA 1978:

A. "department" means the workforce solutions  
department;

B. "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

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1 state, except employers of domestic labor in private homes and  
2 employers of livestock and agricultural labor; and

3 [~~(b)~~] C. "wages" [~~shall mean~~] means all amounts at  
4 which the labor or service rendered is recompensed, whether the  
5 amount is fixed or ascertained on a time, task, piece or  
6 commission basis or other method of calculating such amount."

7 **SECTION 2.** Section 50-4-3 NMSA 1978 (being Laws 1937,  
8 Chapter 109, Section 3) is amended to read:

9 "50-4-3. JOINT ADVENTURERS.--None of the provisions of  
10 [~~this act~~] Sections 50-4-1 through 50-4-12 NMSA 1978 shall  
11 apply to cases where an agreement is entered into between the  
12 employer and the employee at the time of hiring [~~providing~~]  
13 that provides that the employee, as part of [~~his~~] the  
14 employee's wages or compensation, shall have an interest in the  
15 success of the particular work or enterprise in connection with  
16 which the employee is hired. In all such cases, the employer  
17 shall be subject to the provisions of [~~this act~~] Sections  
18 50-4-1 through 50-4-12 NMSA 1978 only to the extent of that  
19 portion of the wages or compensation to be paid in cash, and as  
20 to the balance, the employer and employee shall stand as joint  
21 adventurers."

22 **SECTION 3.** Section 50-4-4 NMSA 1978 (being Laws 1937,  
23 Chapter 109, Section 4, as amended) is amended to read:

24 "50-4-4. [~~DISCHARGES~~] DISCHARGED EMPLOYEES.--

25 A. Whenever an employer discharges an employee, the

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1 unpaid wages or compensation of [~~such~~] the employee, if a fixed  
2 and definite amount and not based on a task, piece or  
3 commission basis or other method of calculation, shall upon  
4 demand become due immediately, and the employer shall pay such  
5 wages to the employee within five days of [~~such~~] discharge.

6 B. In all other cases of discharged employees, the  
7 settlement and payment of wages or compensation shall be made  
8 within ten days of [~~such~~] discharge.

9 C. In case of failure to pay wages or compensation  
10 due an employee within the time [~~hereinbefore~~] fixed in  
11 Subsections A and B of this section, the wages and compensation  
12 of the employee shall continue from the date of discharge until  
13 paid at the same rate the employee received at the time of  
14 discharge and may be recovered in a civil action brought by the  
15 employee [~~provided that~~]. The employee shall not be entitled  
16 to recover any wages or compensation for any period subsequent  
17 to the date of discharge unless [~~he~~] the employee pleads in  
18 [~~his~~] the employee's complaint and establishes that [~~he~~] the  
19 employee made demand within a reasonable time upon [~~his~~] the  
20 employee's employer at the place designated for payment and  
21 payment was refused [~~provided further that~~]. The employee  
22 shall not be entitled to recover any wages or compensation for  
23 any period subsequent to the sixtieth day after the date of  
24 discharge."

25 SECTION 4. Section 50-4-5 NMSA 1978 (being Laws 1937,

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1 Chapter 109, Section 5) is amended to read:

2 "50-4-5. EMPLOYEES QUITTING EMPLOYMENT.--Whenever an  
3 employee, not having a written contract for a definite period,  
4 quits or resigns [~~his~~] employment, the wages or compensation  
5 shall become due and be payable at the next succeeding payday.  
6 Nothing in this section shall prohibit or restrict the right of  
7 the employer to make immediate payment at the time [~~of~~  
8 ~~quitting~~] the employee quits or resigns."

9 SECTION 5. Section 50-4-7 NMSA 1978 (being Laws 1937,  
10 Chapter 109, Section 7) is amended to read:

11 "50-4-7. UNCONDITIONAL PAYMENT OF WAGES CONCEDED TO BE  
12 DUE.--In case of dispute over wages, the employer shall give  
13 written notice to the employee of the amount of wages [~~which~~  
14 ~~he~~] that the employer concedes to be due and shall pay such  
15 amount, without condition, within the times fixed by [~~this act~~]  
16 Sections 50-4-4 and 50-4-5 NMSA 1978. The acceptance by the  
17 employee of any payment so made shall not constitute a release  
18 as to the balance of [~~his~~] the employee's claim. The  
19 provisions of Section [4] 50-4-4 NMSA 1978 shall not be  
20 applicable in cases arising under this section, except as  
21 herein provided."

22 SECTION 6. Section 50-4-8 NMSA 1978 (being Laws 1937,  
23 Chapter 109, Section 8, as amended) is amended to read:

24 "50-4-8. [~~DUTIES OF THE LABOR COMMISSIONER~~] VIOLATIONS--  
25 RESPONSIBILITY AND AUTHORITY TO INVESTIGATE.--

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1           A. ~~[It is the duty of the labor commissioner to]~~  
2     The department shall investigate any violations of Sections  
3     50-4-1 through 50-4-12 NMSA 1978 and ~~[to]~~ institute or cause to  
4     be instituted actions for the enforcement of the same. The  
5     ~~[labor commissioner]~~ department may hold hearings to ~~[satisfy~~  
6     ~~himself as to]~~ determine the justice of any claim and ~~[he]~~  
7     shall cooperate with any employee in the enforcement of any  
8     claim against ~~[his]~~ the employee's employer whenever ~~[in the~~  
9     ~~opinion of the labor commissioner]~~ the department has  
10    determined that the employee's claim is just and valid.

11           B. It is the duty of all district attorneys to  
12    prosecute all cases, both civilly and criminally, ~~[which]~~ that  
13    are referred to them by the ~~[labor commissioner]~~ department.

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

19           **SECTION 7.** Section 50-4-9 NMSA 1978 (being Laws 1937,  
20    Chapter 109, Section 9) is amended to read:

21           "50-4-9. RECORDS, SUBPOENAS, ETC.--

22           ~~[(a)]~~ A. Every employer shall keep a true and  
23    accurate record of hours worked and wages paid to each  
24    employee. The employer shall keep such records on file for at  
25    least one year after the entry of the record.

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1           ~~[(b)]~~ B. The ~~[labor commissioner and his authorized~~  
2 ~~representatives]~~ department shall have the right at all  
3 reasonable times to inspect such records for the purpose of  
4 ascertaining whether the provisions of ~~[this act]~~ Sections  
5 50-4-1 through 50-4-12 NMSA 1978 are complied with.

6           ~~[(c)]~~ C. Any interference with the ~~[labor~~  
7 ~~commissioner or his authorized representatives]~~ department in  
8 the performance of ~~[their]~~ its duties shall be deemed a  
9 violation of ~~[this act]~~ Sections 50-4-1 through 50-4-12 NMSA  
10 1978 and punished as such.

11           ~~[(d)]~~ D. The ~~[labor commissioner and his authorized~~  
12 ~~representatives]~~ department shall have the power to administer  
13 oaths and examine witnesses under oath, issue subpoenas, compel  
14 the attendance of witnesses and the production of payroll  
15 records and take depositions and affidavits in any proceedings  
16 before ~~[said labor commissioner]~~ the department.

17           ~~[(e)]~~ E. In case of failure of any person to comply  
18 with any subpoena lawfully issued or upon the refusal of any  
19 witness ~~[or witnesses]~~ to testify ~~[upon]~~ on any matter on which  
20 ~~[he or they]~~ the witness may be lawfully interrogated, the  
21 ~~[labor commissioner]~~ department may apply to the district court  
22 in the proper county or to the judge thereof for a writ of  
23 attachment to compel ~~[said]~~ the witness to respond to ~~[said]~~  
24 the subpoena or to testify, as the case may be."

25           **SECTION 8.** Section 50-4-11 NMSA 1978 (being Laws 1937,

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1 Chapter 109, Section 12, as amended) is amended to read:

2 "50-4-11. WAGE CLAIMS--LIENS--ASSIGNMENT.--

3 A. The [~~labor commissioner shall have power and~~  
4 ~~authority to~~] department may:

5 (1) take assignments of wage claims of employees  
6 against employers [~~and shall also have power to~~];

7 (2) take assignments of liens upon real or  
8 personal property securing the claims of employees and laborers  
9 [~~and shall have power and authority to~~]; and

10 (3) prosecute actions for the collection of  
11 [~~such~~] assigned claims and for the foreclosure of assigned  
12 liens [~~of such persons securing such claims of persons who, in~~  
13 ~~the judgment of the labor commissioner, are entitled to the~~  
14 ~~services of the labor commissioner and who, in his judgment,~~  
15 ~~have claims or liens or both which are valid and enforceable in~~  
16 ~~the courts~~].

17 B. In cases where the [~~commissioner~~] department has  
18 taken assignments of labor claims [~~which~~] that are lienable  
19 under the lien laws of [~~the state of~~] New Mexico, [~~he shall~~  
20 ~~have power to~~] the department may join any number of claimants  
21 in one statement of claim or lien and, in case of suit, [~~to~~]  
22 may join any number of claimants in one cause of action."

23 **SECTION 9.** Section 50-4-12 NMSA 1978 (being Laws 1937,  
24 Chapter 109, Section 13, as amended) is amended to read:

25 "50-4-12. WAGE CLAIM ACTIONS--COSTS--JURISDICTION--

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1 REPRESENTATION BY DISTRICT ATTORNEY--APPEALS.--

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

8 B. Any sheriff, constable or other officer requested  
9 by the [~~director~~] department to serve any summons, writ,  
10 complaint or order shall do so without requiring the [~~director~~]  
11 department to pay any fees or furnish any security or bond.

12 C. Where all claims joined together do not exceed in  
13 the aggregate the jurisdictional limit of the magistrate or  
14 metropolitan court, the [~~director~~] department may institute an  
15 action against the employer in any magistrate or metropolitan  
16 court having jurisdiction without referring the claim to the  
17 district attorney. [~~In the event that~~] If during the course of  
18 the proceedings representation by an attorney at law becomes  
19 necessary or [~~in the director's judgment~~] advisable, the  
20 [~~director~~] department shall [~~so~~] notify the district attorney,  
21 and it shall then be the duty of the district attorney [~~or the~~  
22 ~~district attorney's assistant~~] to appear for the [~~director~~]  
23 department in the cause.

24 D. [~~In the event~~] If the cause is appealed by the  
25 [~~director~~] department, no bond or other security shall be

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1 required or fees charged the [~~director~~] department for court  
2 costs or sheriff's fees in serving process."

3 SECTION 10. Section 50-4-13 NMSA 1978 (being Laws 1933,  
4 Chapter 149, Section 3) is amended to read:

5 "50-4-13. HOURS OF EMPLOYMENT--EATING ESTABLISHMENTS.--

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

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

17 SECTION 11. Section 50-4-15 NMSA 1978 (being Laws 1933,  
18 Chapter 149, Section 5) is amended to read:

19 "50-4-15. UNIFORM TIME FOR BEGINNING WORK--NOTICE OF  
20 CHANGE.--The beginning of the day of labor shall be uniform as  
21 provided for by the rules or regulations governing [~~to~~] the  
22 place of employment; provided [~~however~~] that [~~in case~~] if any  
23 change in the time of the beginning of the day of labor is  
24 desired, it [~~shall be~~] is the duty of the management of [~~such~~  
25 ~~an~~] the establishment to notify [~~such~~] the employee of [~~such~~]

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1 the change on the day prior to [~~such~~] the change contemplated.  
2 [~~said~~] Notice shall be served during the working day."

3 SECTION 12. Section 50-4-16 NMSA 1978 (being Laws 1933,  
4 Chapter 149, Section 6) is amended to read:

5 "50-4-16. TIME RECORDS--INSPECTION.--

6 A. Every employer to whom [~~this act applies~~] Sections  
7 50-4-13 through 50-4-18 NMSA 1978 apply shall be required to  
8 keep a time record showing the number of hours each [~~male~~]  
9 employee worked each day. [~~Such~~]

10 B. The time record shall be open at all reasonable  
11 hours to the inspection of the [~~State labor commissioner, his~~  
12 ~~agents or agent, record of which is required to be kept as~~  
13 ~~herein provided for~~] workforce solutions department."

14 SECTION 13. Section 50-4-17 NMSA 1978 (being Laws 1933,  
15 Chapter 149, Section 7) is amended to read:

16 "50-4-17. FAILURE TO KEEP RECORDS OR COMPLY--PENALTY.--  
17 [~~The failure of~~] Any employer who fails to keep [~~such a~~] the  
18 time record required by Section 50-4-16 NMSA 1978 or who makes  
19 any false entry therein or [~~the failure~~] who fails to comply  
20 with the provisions of [~~this Act~~] Sections 50-4-13 through  
21 50-4-18 NMSA 1978 shall be guilty of a misdemeanor and upon  
22 conviction thereof shall be fined not less than seventy-five  
23 dollars (\$75.00) or more than three hundred dollars (\$300) for  
24 each offense."

25 SECTION 14. Section 50-4-23 NMSA 1978 (being Laws 1967,

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1 Chapter 242, Section 1, as amended) is amended to read:

2 "50-4-23. PERSONS WITH A DISABILITY--MINIMUM WAGE--

3 [~~DIRECTOR~~] DEPARTMENT POWERS AND DUTIES.--

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

14 B. The [~~director~~] workforce solutions department,  
15 pursuant to regulations and upon certification of any state  
16 agency administering or supervising the administration of  
17 vocational rehabilitation services, may issue a special  
18 [~~certificates~~] certificate that [~~allow~~] allows the holder  
19 thereof to work at wages that are less than those required by  
20 Subsection A of this section and that are related to the  
21 [~~workers'~~] worker's productivity, for the employment of:

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

24 (2) persons with multiple disabilities and other  
25 persons whose earning capacity is so severely impaired that

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1 they are unable to engage in competitive employment.

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

14 D. The state agency administering or supervising the  
15 administration of vocational rehabilitation may issue a  
16 temporary certificate for a period not to exceed ninety days  
17 pursuant to Subsections A, B and C of this section and may  
18 request an extension of the certification by the [~~director~~]  
19 workforce solutions department when it is determined that the  
20 severity of disability of an individual or circumstances  
21 warrants an extension of the certification."

22 SECTION 15. Section 50-4-25 NMSA 1978 (being Laws 1955,  
23 Chapter 200, Section 4, as amended) is amended to read:

24 "50-4-25. POSTING OF SUMMARY OF THE ACT.--Every employer  
25 subject to the Minimum Wage Act shall keep a summary of it,

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1 furnished by the [~~labor commissioner~~] workforce solutions  
2 department without charge, posted in a conspicuous place on or  
3 about the premises wherein any person subject to the Minimum  
4 Wage Act is employed, and the summary shall clearly and  
5 conspicuously set forth the current minimum wage."

6 SECTION 16. Section 50-4-26 NMSA 1978 (being Laws 1955,  
7 Chapter 200, Section 5, as amended) is amended to read:

8 "50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

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

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

23 C. In addition to penalties provided pursuant to this  
24 section, an employer who violates any provision of Section  
25 50-4-22 NMSA 1978 shall be liable to the employees affected in

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

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

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

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

23 G. Civil actions and appeals of civil actions brought  
24 to collect unpaid or underpaid wages, interest and any other  
25 amounts due under this section shall be heard by the court at

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1 the earliest possible date and shall be entitled to a  
2 preference over all other civil actions, to the same extent as  
3 civil actions to collect contributions pursuant to Section  
4 51-1-36 NMSA 1978, on the calendar of the court."

5 SECTION 17. Section 50-4-27 NMSA 1978 (being Laws 1967,  
6 Chapter 188, Section 5) is amended to read:

7 "50-4-27. AUTHORITY OF [~~LABOR COMMISSIONER~~] WORKFORCE  
8 SOLUTIONS DEPARTMENT TO PROMULGATE RULES--HEARING ON RULES--  
9 NOTICE--PUBLICATION.--The [~~state labor commissioner~~] workforce  
10 solutions department shall have the authority to promulgate and  
11 issue rules and regulations necessary to administer and  
12 accomplish the purposes of the Minimum Wage Act. Such rules  
13 and regulations shall be adopted after notice and public  
14 hearing. A copy of the notice of hearing together with a copy  
15 of the proposed regulations shall be filed with the librarian  
16 of the supreme court library at least twenty days prior to the  
17 hearing. In addition, a copy of the notice of hearing shall be  
18 sent to all known interested persons. Any interested person  
19 shall have the right to appear and present evidence."

20 SECTION 18. Section 50-4-30 NMSA 1978 (being Laws 1971,  
21 Chapter 169, Section 1) is amended to read:

22 "50-4-30. DAILY MAXIMUM HOURS OF EMPLOYMENT--  
23 EXCEPTIONS.--

24 A. No employee other than a [~~fireman~~] firefighter,  
25 law enforcement officer or farm or ranch hand whose duties

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1 require ~~[them to work]~~ working longer hours or ~~[employees]~~  
2 employee primarily in a standby position shall be required to  
3 work for any employer within the state more than sixteen hours  
4 in any one day of twenty-four hours except in emergency  
5 situations.

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

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