



INVESTIGATIONS MANUAL LABOR RELATIONS DIVISION

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I. WAGE PAYMENT REQUIREMENTS

Section I contains the legal requirements concerning wage payment and recordkeeping that apply to all covered employment relationships in New Mexico.

A. THE WAGE PAYMENT ACT (WPA)

The Wage Payment Act (WPA) appears at Sections 50-4-1 through 50-4-12 of the New Mexico wage payment laws.⁷ Generally, the WPA requires employers to pay employees all “wages” as that term is broadly defined in the WPA in a timely fashion, and to maintain time and pay records. It also prohibits unauthorized or unlawful deductions from wages.

1. Defining “wages”

The WPA defines “wages” as “all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.”⁸ Section 50-4-2(B) states, “an employer shall pay wages in full, less lawful deductions and less payroll deductions authorized by the employer and employee.”

In plain language, these two provisions require an employer to pay the wage set through an established practice, agreement, or understanding between the employer and employee—which is usually the wage rate offered to and accepted by the employee before the work was performed.

Almost all employees in New Mexico are covered by the WPA. Generally, it does not matter how their wages are calculated or what jobs they perform. Employees paid on commission are covered by the WPA, as are salespeople and others who may be exempt from the MWA. There is only one exception to the WPA. It is “employers of livestock and agricultural labor.” The meaning of the exception is discussed in Section II.D.2 (“Exemption to the definition of ‘employee’ in the WPA”).

Sometimes, there are disagreements about what the agreed wage rate actually was. If there is a dispute, you will have to dig a little deeper to decide what the agreed wage rate was, based on all the available evidence. For example:

- Can either the employer or employee describe a conversation about the wage rate? What do they each say? Is there a way to reconcile their stories?
- Were there any witnesses to their conversation? What do they say?
- Did the employer actually pay the employee the new wage rate?
- Has the employer produced paystubs or payroll records that reflect a particular rate? If these records reflect the employer’s position, what is the employee’s explanation?

You may uncover other facts by interviewing the employer, employee, and witnesses, as well as reviewing employment records, to help you decide what the pay agreement was. It is important

⁷ NMSA 1978 §§ 50-4-1 – 50-4-12.

⁸ NMSA 1978 § 50-4-1(B).

to remember that an employee does not have the burden to produce records, and thus the employee's credible testimony alone may be enough to prove a case.⁹

The wage rate can change. An employer may increase or reduce an employee's agreed wage rate. However, the employer must inform the employee of the change before the employee performs work. If the employee continues to perform work after being informed of the change, and accepts the new wage rate without question, then LRD generally assumes the employee has accepted the change. However, if the employee claims he/she was not informed of the change or did not accept it, you will have to investigate to decide whether the employee and the employer actually reached a new agreement on the wage rate.

2. Vacation pay

Accrued vacation pay is included in the WPA's definition of "wages."¹⁰ Therefore, employees must be permitted to use their vacation pay during their employment, subject to any employer policies on notice, etc. Furthermore, any remaining vacation pay earned under an employer's vacation pay policy must be paid out upon termination of employment, just as any other form of wages must be paid.

3. Minimum wages in local jurisdictions

Five counties and municipalities in New Mexico have minimum wages that are higher than the New Mexico state rate. Under the WPA, the wage paid cannot be lower than the local minimum wage rate applicable in the jurisdiction. It may be higher than the local minimum wage rate, but it cannot be lower.¹¹

a. Local minimum wage rates

Albuquerque, Bernalillo County, Las Cruces, the City of Santa Fe, and Santa Fe County have local minimum wage rates. Local wage rates can be found on the DWS website. County minimum wages apply only to the unincorporated areas of that county. For example, although parts of Española are in Santa Fe County, that county ordinance does not apply in Española because Española is an incorporated city. On the other hand, work performed in Eldorado is covered by the Santa Fe County minimum wage, because Eldorado is not incorporated. Coverage for work performed on tribal lands is discussed in Section I.I.E ("LRD's territorial jurisdiction").

⁹ 11.1.4.115 NMAC, "Employer Records": "[I]f the employer has not maintained and produced to the LRD the wage and hour records required by law, or if the LRD determines that employer records are inaccurate or incomplete, the LRD will calculate the wages due to the wage claimant based on employee records or the employee's credible recollection of the hours worked and wages paid or unpaid."

¹⁰ *Wolf v. Sam's Town Furniture, Inc.*, 1995-NMCA-114, ¶ 1, 120 N.M. 603, 604, 904 P.2d 52, 53.

¹¹ NMSA 1978 § 50-4-29 (any laws relating to minimum wages that are more favorable than the laws provided for in the MWA shall take precedence over the MWA).