

**BERNALILLO COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**

**ORDINANCE NO. \_\_\_\_\_**

**REPEALING AND REPLACING THE BERNALILLO COUNTY MINIMUM WAGE ORDINANCE; SETTING MINIMUM WAGES FOR EMPLOYEES; CREATING EXEMPTIONS; ESTABLISHING PROCEDURES FOR ENFORCEMENT.**

**Section 1. SHORT TITLE.** This ordinance may be cited as “The Bernalillo County Minimum Wage Ordinance.”

**Section 2. DEFINITIONS.**

**COUNTY.** The County of Bernalillo

**EMPLOYER.** Any person, who is required to have a business registration from the County and who directly or indirectly or through an agent or any other person including, but not limited to, through a subsidiary or through the services of a temporary services agency, a staffing agency, a building services contractor, or any similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. “Employer” shall include the County.

**EMPLOYEE.** Any person who performs work for an Employer for monetary compensation for at least two (2) hours in a given week within the unincorporated limits of the County. “Employee” shall include persons who perform work for an Employer on a full-time, part-time, seasonal, or temporary basis. Employee shall not include any person who is excluded from the definition of employee under NMSA §§ 50-4-21(C)(3)-(5), (7) of the New Mexico Minimum Wage Act, except that persons employed by the County of Bernalillo are employees. “Employee” shall not include interns working for an Employer for academic credit in connection with a course of study at an accredited school, college or university or employees working for an accredited school, college or university pursuant to a work-study program while attending that school, college or university. “Employee” shall not include any person who has received a certificate from the state labor commissioner pursuant to § 50-4-23 NMSA 1978 or § 50-4-21(C)(12) NMSA 1978.

**MINIMUM WAGE, MINIMUM WAGE RATE.** The minimum hourly rates of monetary compensation for work as specified in this ordinance.

**TIP.** A sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. “Tip” shall include only tips actually received by an Employee as money belonging to him or her. Where Employees practice tip pooling or splitting, as where wait staff give a portion of their tips to bus persons, both the actual amounts retained by the waiters or waitresses and those given the bus persons shall be considered “Tips” of the individual

Employee who retains them. A compulsory charge for service imposed on a customer by an Employer's establishment shall not be considered a "Tip" unless it is distributed by the Employer to its Employees.

**TIPPED EMPLOYEE.** Any Employee engaged in an occupation in which he or she customarily and regularly receives Tips from customers.

**TIPPED MINIMUM WAGE.** The minimum cash wage that a Tipped Employee must receive from his or her Employer, as provided under Section 3(A).

### **Section 3. MINIMUM WAGE.**

**(A)** Minimum Wage Payment Required. Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage for each hour worked within the unincorporated limits of the County. The current State of New Mexico minimum wage of Seven Dollars and Fifty Cents (\$7.50), except as provided in subsection B, must become the greater by One Dollar (\$1.00) per hour, in two Fifty Cent increments as provided below:

- a. The minimum wage shall be enacted via two incremental increases of Fifty Cents (\$0.50) as provided in subsection (b).
- b. The minimum wage shall be increased by Fifty Cents (\$0.50) effective July 1st, 2013; and a second increment of Fifty Cents (\$0.50) increase effective January 1st, 2014.
- c. Effective January 1<sup>st</sup>, 2014 the minimum wage for Bernalillo County shall be Eight Dollars and Fifty Cents (\$8.50), except as provided in subsection B.
- d. Annual Cost of Living Adjustment. The minimum wage shall be increased on January 1<sup>st</sup>, 2015, and on January 1<sup>st</sup> of successive years by the Bernalillo County Commission based on the increase, if any, in the cost of living, and rounded to the nearest multiple five cents. The increase in the cost of living shall be calculated based on the percentage increase, if any, of the Consumer Price Index or its successor index as published by the U.S. Department of Labor or its successor agency. The County shall publish the adjusted Minimum Wage for the forthcoming year on its Internet home page by October 15 of each preceding year, and they shall become effective on January 1 of the forthcoming year.
- e. The Board of County Commissioners will review the Minimum Wage Ordinance every five (5) years, in order to assess its continuing adequacy.

**(B)** Exceptions to the minimum wage increase shall include:

- a. Any person employed by a parent, spouse or a sibling;
- b. Any person performing babysitting services in the employer's home on a casual basis;
- c. Any employee under the age of 16.

**(C)** For any employee who customarily and regularly receives tips or gratuities, the minimum wage shall remain at the Federal Minimum Wage of Two Dollars and Thirteen Cents

(\$2.13) per hour. If an employee's tips combined with the employer's cash wage of at least Two Dollars and Thirteen Cents (\$2.13) per hour do not equal the minimum hourly wage established in section A, the employer shall make up the difference. This subsection shall not be construed to prohibit the pooling of tips among Employees who customarily and regularly receive tips.

**(D) Minimum Wage Rate.** For Employers who provide healthcare and/or childcare benefits to an Employee during any pay period for which the Employer pays an amount for those healthcare benefits equal to or in excess of an annualized cost of \$2500.00, beginning April 1, 2013 and each year thereafter, the Minimum Wage for that employee shall be an hourly rate of \$1.00 less than the current Minimum Wage otherwise applicable to employees who do not receive such benefits.

#### **Section 4. NOTICE, POSTING AND RECORDS.**

**(A) Notice to Employees.** Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works a notice published each year by the County Zoning, Building and Planning Office informing Employees of the current Minimum Wage rates and of their rights under this ordinance. Every Employer shall post such notices in English and Spanish.

**(B) Records.** Employers shall maintain payroll records showing the hours worked daily by and the wages paid to all Employees. Employers shall retain payroll records pertaining to Employees for a period of three years. When the Employer uses tips to meet the Minimum Wage for an Employee, the Employer must have a Tip declaration signed by the Tipped Employee for each pay period.

#### **Section 5. IMPLEMENTATION AND ENFORCEMENT.**

**(A) Rulemaking.** The County shall have the authority to coordinate implementation and enforcement of this ordinance and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the County shall have the force and effect of law and may be relied on by Employers, Employees, and other parties to determine their rights and responsibilities under this ordinance. Any such guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this ordinance, including supplementary procedures for helping to inform Employees of their rights under this ordinance and for monitoring Employer compliance with this ordinance.

**(B) Civil Enforcement.** Any Employee receiving less than the wage to which the Employee is entitled under this ordinance may bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover the balance of the wages owed, including interest thereon, and an additional amount equal to twice the wages owed, and any other appropriate legal or equitable relief.

**Section 6. RELATIONSHIP TO OTHER REQUIREMENTS.** This ordinance provides for payment of Minimum Wage rates and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or

standard that provides for payment of higher or supplemental wages, benefits, or protections. Nothing contained in this ordinance prohibits an Employer from paying more than the Minimum Wage rates established under this ordinance.

**Section 7. SEVERABILITY CLAUSE.** If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The County Commission hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

**Section 8. EFFECTIVE DATE.** This ordinance shall take effect thirty days after final adoption by the Bernalillo County Board of County Commissioners.