



Legislation Text

File #: O-24-21, Version: 2

**CITY of ALBUQUERQUE**  
**TWENTY SIXTH COUNCIL**

COUNCIL BILL NO. C/S O-24-21 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Nichole Rogers, by request

ORDINANCE

C/S Amending Article 12 Of Chapter 13 Of The Revised Ordinances Of Albuquerque ("The Albuquerque Minimum Wage Ordinance") (Rogers, by request)  
BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. Sections 13-12-1 through 13-12-6 of the Revised Ordinances of Albuquerque 1994 are hereby amended as follows:

“§ 13-12-1 SHORT TITLE.

This article may be cited as "The Albuquerque Minimum Wage Ordinance."

§ 13-12-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*CITY*. The City of Albuquerque.

*EMPLOYEE*. Any person who performs work for an employer for monetary compensation for at least two hours in a given week within the municipal limits of the city. *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 [1978,] §§ 50-4-21(c)[~~(3)-(5), (7)~~] [~~(1)-(10)~~] of the New Mexico Minimum Wage Act, except that persons employed by the City of Albuquerque 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 ~~[NMSA 1978.] § 50-4-23 [NMSA 1978 or § 50-4-21(c)(12) NMSA 1978].~~

*EMPLOYER.* Any person, partnership, association, corporation, business trust, legal representative, or any other entity, or group of persons or entities, including corporate officers or executives, who is required to have a business license or business registration from the City of Albuquerque 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 City of Albuquerque.

~~[*MINIMUM WAGE, MINIMUM WAGE RATE.* The minimum hourly rates of monetary compensation for work as specified in this article.]~~

[*CITY MINIMUM WAGE, CITY MINIMUM WAGE RATE.* The minimum hourly rate of monetary compensation for work as set by ordinance by the City of Albuquerque, by New Mexico state law, or by federal law.]

***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 § 13-12-3(A).**

**§ 13-12-3 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 municipal limits of the city.]~~ [their regular rate of pay for all hours worked within the municipal limits of the city, but in no event shall an employer pay an employee less than the Prevailing Minimum Wage for all hours worked.] [For all hours worked in excess of forty (40) hours within a seven-day period employers shall pay employees at one and one-half times their regular rate of pay.] Tips or commissions received and retained by a tipped employee may be counted as wages and credited towards partial satisfaction of the [City] minimum wage. Provided, however, that the cash wage paid to a tipped employee by ~~[his or her]~~ [their] employer shall be no less than the tipped minimum wage, which ~~[, beginning January 1, 2013, shall be 45% of the minimum wage, and beginning January 1, 2014 and each year thereafter,]~~ shall be 60% of the [City] minimum wage. ~~[An employer may credit tips as part of the wages of a tipped employee only if the employer informs the tipped employee in advance in writing, pays the tipped employee a cash wage equal to or greater than the tipped minimum wage, and is able to establish by the tipped employee's declaration for Federal Insurance Contributions Act (FICA) purposes or by its records of charged tips that the total of the tips received by the tipped employee and the cash wages paid by the employer is equal to or greater than the minimum wage. The tips received by a tipped employee become the property of the tipped employee and may not be shared with the employer. This subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.]~~

(B) *Minimum wage rate.* ~~[Beginning January 1, 2007, the minimum wage for employees shall be an hourly rate of \$6.75. Beginning January 1, 2008, the minimum wage for employees shall be an hourly rate of \$7.15. Beginning January 1, 2009, the minimum wage for employees shall be an hourly rate of \$7.50. Beginning January 1, 2013, the minimum wage for employees shall be an hourly rate of \$8.50.]~~ [The City Minimum Wage Rate is \$12.00 per hour, effective January 1, 2025. In the event that the minimum wage rate mandated by either the State of New Mexico or the United States is higher than the City minimum wage rate of \$12.00 per hour, the higher rate shall prevail and that Rate shall be considered the City's 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 [and/or childcare] benefits equal to or in excess of an annualized cost of \$2,500.00, ~~[, beginning January 1, 2007, the minimum wage for that employee shall be an hourly rate of \$5.75, in addition to the healthcare benefits and/or childcare benefits, beginning January 1, 2008, the minimum wage for that employee shall be an hourly rate of \$6.15, in addition to the healthcare and/or childcare benefits, beginning January 1, 2009, the minimum wage for that employee shall be an hourly rate of \$6.50, in addition to the healthcare and/or childcare benefits, and beginning January 1, 2013 and each year thereafter,]~~ the minimum wage for that employee ~~[shall]~~ [may] be an hourly rate of [up to] \$1.00 less than the current [City] minimum wage otherwise applicable to employees who do not receive such benefits, [but in no event shall the deduction decrease an employee's pay rate below the State or Federal minimum wage.]

(C) *Annual cost of living adjustment.* Beginning on January 1 ~~[, 2026]~~ [. 2014] and annually on each January 1 thereafter, the ~~[minimum wage rate]~~ [City Minimum Wage Rate] shall be adjusted based on the increase, if any, in the cost of living, and rounded to the nearest multiple of five cents [, or alternatively, to an amount which is equal to any minimum wage established by the State of New Mexico or the United States, whichever is highest]. The increase in the cost of living shall be calculated based on the percentage increase, if any, as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index [("CPI")] (All Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency. [In any year where the CPI adjustment is zero or less than zero, there shall be no change in the City Minimum Wage Rate.] The adjusted tipped minimum wage shall be calculated based on the adjusted [City] minimum wage, and rounded to the nearest multiple of five cents. The city shall publish the adjusted [City] minimum wage and the adjusted tipped minimum wage for the forthcoming year on its Internet home page by October 15 of each year, and they shall become effective on January 1 of the forthcoming year.

#### § 13-12-4 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 City Attorney informing employees of the current minimum wage rates and of their rights under this article. 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.

#### § 13-12-5 IMPLEMENTATION AND ENFORCEMENT.

(A) *Implementation and Rulemaking.* The city shall implement and enforce this article and shall promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the city 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 article. Any such guidelines or rules shall establish procedures for ensuring fair, efficient and cost-effective implementation of this article, including supplementary procedures, such as a hotline, for helping to inform employees of their rights under this article and for monitoring employer compliance with this article.

(B) ~~[Civil enforcement.]~~ [Private Cause of Action.] Any employee receiving less than the wage to which the employee is entitled under this article 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.

[(C) Retaliation Prohibited.] Any employee who has suffered discrimination in any manner or had adverse [employment] action taken against that employee in retaliation for exercising rights protected under this article may bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover actual damages plus reinstatement in the case of discharge. In

any case where an employee has been discharged in retaliation for exercising rights under this article, the period of violation extends from the day of discharge until the day the employee is reinstated, the day the employee agrees to waive reinstatement or, in the case of an employee who may not be rehired, from the day of discharge until the day legal judgment is final. In such case, unpaid wages and actual damages recovered shall be payable to the individual employee as to whom the violation occurred. A plaintiff prevailing in an action to enforce this article shall be entitled to recover his or her costs and expenses of suit and reasonable attorney's fees.

~~[(D)]~~ ~~[(C)]~~ **Criminal penalty.** Any person who violates this article shall be deemed guilty of a petty misdemeanor and upon conviction shall be subject to the criminal penalty provisions set forth in § 1-1-99 of this code of ordinances. Each separate violation shall constitute a separate offense and each day of violation shall constitute a separate offense.

~~[(E)]~~ ~~[(D) The City Attorney shall enforce this article.]~~ **[Civil Enforcement. The City Attorney or their designee shall have the following authority:**

- (1) To implement administrative rules consistent with this ordinance;**
- (2) To initiate investigations, on its own initiative or upon receipt of an allegation of a violation, to determine compliance with this ordinance at any time, in accordance with administrative rule;**
- (3) To establish an administrative process to determine an employer's compliance with this ordinance where there is cause to believe that an employer is not in compliance with this ordinance, in accordance with administrative rule;**
- (4) To sanction employers for noncompliance with this ordinance through the issuance of wage orders and the restriction of licenses, permits, and privileges related to the conduct of business within the municipal limits of the City; and**
- (5) To judicially enforce this ordinance in a court of competent jurisdiction, including but not limited to actions for declaratory, injunctive and legal relief, on behalf of the City and, in the sole discretion of the City Attorney, any employee adversely affected by an employer's noncompliance with this ordinance.]**

**[(F) The City Attorney, or their designee, has sole discretion to decide**

**whether to investigate a complaint or otherwise pursue a possible violation of this article.]**

**[G) All private actions to enforce this ordinance shall be brought within three (3) years of the last violation of this ordinance. To the extent permitted by law, the statute of limitations for civil actions is tolled during any investigation of an employer by the City Attorney.**

**[H) The remedies provided herein shall not be exclusive, but are supplemental to all other remedies provided by law.]**

#### **§ 13-12-6 RELATIONSHIP TO OTHER REQUIREMENTS.**

This article 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 article prohibits an employer from paying more than the minimum wage rates established under this article.”

**SECTION 2. 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 Council 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 3. COMPILATION.** Section 1 of this ordinance shall amend, be incorporated in and compiled as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

**SECTION 4. EFFECTIVE DATE.** This ordinance takes effect five days after publication by title and general summary.