

BERNALILLO COUNTY  
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2013-12

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

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

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4           **Section 2. DEFINITIONS.**

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6           **COUNTY.** The County of Bernalillo

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

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14           **EMPLOYEE.** Any person who performs work for an Employer for monetary  
15 compensation for at least two (2) hours in a given week within the unincorporated limits of the  
16 County. “Employee” shall include persons who perform work for an Employer on a full-time,  
17 part-time, seasonal, or temporary basis. Employee shall not include any person who is excluded  
18 from the definition of employee under NMSA §§ 50-4-21(C)(3)-(5), (7) of the New Mexico  
19 Minimum Wage Act, except that persons employed by the County of Bernalillo are employees.  
20 “Employee” shall not include interns working for an Employer for academic credit in connection  
21 with a course of study at an accredited school, college or university or employees working for an  
22 accredited school, college or university pursuant to a work-study program while attending that  
23 school, college or university. “Employee” shall not include any person who has received a  
24 certificate from the state labor commissioner pursuant to § 50-4-23 NMSA 1978 or § 50-4-  
25 21(C)(12) NMSA 1978.

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

29  
30           **TIP.** A sum presented by a customer as a gift or gratuity in recognition of some service  
31 performed for the customer. “Tip” shall include only tips actually received by an Employee as  
32 money belonging to him or her. Where Employees practice tip pooling or splitting, as where  
33 wait staff give a portion of their tips to bus persons, both the actual amounts retained by the  
34 waiters or waitresses and those given the bus persons shall be considered “Tips” of the individual

CONTINUATION PAGE 2, ORDINANCE NO. 2013-12 REPEALING AND REPLACING THE BERNALILLO COUNTY MINIMUM WAGE ORDINANCE; SETTING MINIMUM WAGES FOR EMPLOYEES; CREATING EXEMPTIONS; ESTABLISHING PROCEDURES FOR ENFORCEMENT.

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

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

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

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11 **Section 3. MINIMUM WAGE.**

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

- 18  
19 a. The minimum wage shall be enacted via two incremental increases of Fifty Cents  
20 (\$0.50) as provided in subsection (b).  
21 b. The minimum wage shall be increased by Fifty Cents (\$0.50) effective July 1st,  
22 2013; and a second increment of Fifty Cents (\$0.50) increase effective January  
23 1st, 2014.  
24 c. Effective January 1<sup>st</sup>, 2014 the minimum wage for Bernalillo County shall be  
25 Eight Dollars and Fifty Cents (\$8.50), except as provided in subsection B.  
26 d. Annual Cost of Living Adjustment. The minimum wage shall be increased on  
27 January 1<sup>st</sup>, 2015, and on January 1<sup>st</sup> of successive years by the Bernalillo County  
28 Commission based on the increase, if any, in the cost of living, and rounded to the  
29 nearest multiple five cents. The increase in the cost of living shall be calculated  
30 based on the percentage increase, if any, of the Consumer Price Index or its  
31 successor index as published by the U.S. Department of Labor or its successor  
32 agency. The County shall publish the adjusted Minimum Wage for the  
33 forthcoming year on its Internet home page by October 15 of each preceding year,  
34 and they shall become effective on January 1 of the forthcoming year.  
35 e. The Board of County Commissioners will review the Minimum Wage Ordinance  
36 every five (5) years, in order to assess its continuing adequacy.

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

- 39  
40 a. Any person employed by a parent, spouse or a sibling;  
41 b. Any person performing babysitting services in the employer's home on a casual  
42 basis;  
43 c. Any employee under the age of 16.  
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1 (C) For any employee who customarily and regularly receives tips or gratuities, the  
2 minimum wage shall remain at the Federal Minimum Wage of Two Dollars and Thirteen Cents  
3 (\$2.13) per hour. If an employee's tips combined with the employer's cash wage of at least Two  
4 Dollars and Thirteen Cents (\$2.13) per hour do not equal the minimum hourly wage established  
5 in section A, the employer shall make up the difference. This subsection shall not be construed to  
6 prohibit the pooling of tips among Employees who customarily and regularly receive tips.  
7

8 (D) Minimum Wage Rate. For Employers who provide healthcare and/or childcare  
9 benefits to an Employee during any pay period for which the Employer pays an amount for those  
10 healthcare benefits equal to or in excess of an annualized cost of \$2500.00, beginning April 1,  
11 2013 and each year thereafter, the Minimum Wage for that employee shall be an hourly rate of  
12 \$1.00 less than the current Minimum Wage otherwise applicable to employees who do not  
13 receive such benefits.  
14

15 **Section 4. NOTICE, POSTING AND RECORDS.**  
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17 (A) Notice to Employees. Every Employer shall post in a conspicuous place at any  
18 workplace or job site where any Employee works a notice published each year by the County  
19 Zoning, Building and Planning Office informing Employees of the current Minimum Wage  
20 rates and of their rights under this ordinance. Every Employer shall post such notices in English  
21 and Spanish.  
22

23 (B) Records. Employers shall maintain payroll records showing the hours worked  
24 daily by and the wages paid to all Employees. Employers shall retain payroll records pertaining  
25 to Employees for a period of three years. When the Employer uses tips to meet the Minimum  
26 Wage for an Employee, the Employer must have a Tip declaration signed by the Tipped  
27 Employee for each pay period.  
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29 **Section 5. IMPLEMENTATION AND ENFORCEMENT.**  
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31 (A) Rulemaking. The County shall have the authority to coordinate implementation  
32 and enforcement of this ordinance and may promulgate appropriate guidelines or rules for such  
33 purposes. Any guidelines or rules promulgated by the County shall have the force and effect of  
34 law and may be relied on by Employers, Employees, and other parties to determine their rights  
35 and responsibilities under this ordinance. Any such guidelines or rules may establish  
36 procedures for ensuring fair, efficient and cost-effective implementation of this ordinance,  
37 including supplementary procedures for helping to inform Employees of their rights under this  
38 ordinance and for monitoring Employer compliance with this ordinance.  
39

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

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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.

DONE this 23 day of April, 2013.

BOARD OF COUNTY COMMISSIONERS

Maggie Hart Stebbins  
Maggie Hart Stebbins, Chair

Debbie O'Malley  
Debbie O'Malley, Vice-Chair

Art De La Cruz, Member

Lonnie C. Talbert, Member

Wayne A. Johnson, Member

County Legal

Date:

*[Handwritten signature]*  
4/24/13

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CONTINUATION PAGE 5, ORDINANCE NO. 2013-12 REPEALING AND  
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ESTABLISHING PROCEDURES FOR ENFORCEMENT.

1 ATTEST:

2 Maggie Toulouse Oliver  
3 Maggie Toulouse Oliver, County Clerk

4 Date: 5/09/13  
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