

Opinion No. 75-31

May 12, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: The Honorable R. M. Montoya State Labor Commissioner Villagra Building, Room 129 Santa Fe, New Mexico 87503

QUESTIONS

FACTS

Section 59-3-22(C), NMSA, 1953 Comp., was amended by Laws of 1975, Chapter 3 (Special Session) which contained an emergency clause and which was signed into law by the Governor on April 4, 1975.

QUESTIONS

When do the provisions of subsection C of Section 59-3-22, **supra**, become effective?

CONCLUSION

On April 4, 1975.

OPINION

{*95} ANALYSIS

Following amendment, Section 59-3-22(C), above, now reads:

"All employees covered by Subsection A of this section, who customarily and regularly receive more than forty dollars (\$ 40.00) a month in tips shall be paid a minimum hourly wage of one dollar fifty cents (\$ 1.50). All tips received by such employees shall be retained by the employee, except that nothing herein shall prohibit the pooling of tips among employees."

The language which appears to have caused your question is the reference to "Subsection A." Subsection A of Section 59-3-22, **supra**, together with introductory language, reads:

"59-3-22. MINIMUM WAGES. -- Every employer, except as provided in Section 59-3-21 NMSA 1953, shall pay the following minimum wage:

A. For employees who have been covered prior to the effective date of this section, by the minimum wage provisions of this act:

\$ 2.00 an hour beginning July 1, 1975;

\$ 2.20 an hour beginning February 1, 1976;

\$ 2.30 an hour beginning February 1, 1977;"

Because the wages specified in Subsection A do not become effective until July 1, 1975, you question whether that date might govern the effective date of the wage provision in Subsection C. It does not. Subsection C relies upon Subsection A only for the determination of the identity of employees to be covered. In effect, Subsection C is an alternative rate plan and does not rely upon Subsection A for the determination of when the wages required by Subsection C must be paid.

For these reasons, Subsection C became effective on April 4, 1975, in accordance with the emergency clause.

By: Bill Primm

Assistant Attorney General