

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-347

**AN ORDINANCE ESTABLISHING A MINIMUM WAGE
WITHIN THE INCORPORATED COUNTY OF LOS ALAMOS**

WHEREAS, the incorporated County of Los Alamos (“County”) in an incorporated county in the State of New Mexico as provided in Section 5, Article 10 of the New Mexico Constitution; and

WHEREAS, the County, pursuant to Section 5, Article 10 of the State Constitution, is also granted all powers of a municipality; and

WHEREAS, the County has determined that a minimum wage Ordinance will provide for the public welfare, health, safety and prosperity by ensuring that citizens can better support and care for their families through their own efforts;

WHEREAS, the public welfare, health, safety and prosperity of Los Alamos require wages and benefits sufficient to help support a decent and healthy life for workers and their families;

WHEREAS, it is in the public interest to require employers in the County who have the opportunity to do business in the County, to pay employees a minimum wage;

BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS, as follows:

Section 1. The Los Alamos County Code of Ordinances is amended by amending Article 1 of Chapter 12 by adding sections numbered 12-1 through 12-10, which sections read as follows:

Article I. MINIMUM WAGE

Section 12-1. Authority.

This Minimum Wage Ordinance is adopted pursuant to the general welfare and police powers conferred upon the County by NMSA 1978 Section 3-17-1 et seq. and Section 3-18-1 et seq., pursuant to the powers conferred upon County by the State of New Mexico Constitution, Article X §§ 5 and 6, and the Municipal Charter Act Section 3-15-1 et seq. NMSA 1978, which have been granted to the County through the adoption of its Charter.

Section 12-2. Purpose

The purpose of this Article is to raise the income of low-income employees of employers who have a business location within Los Alamos County.

Section 12-3. Definitions.

A. “County” means the Incorporated County of Los Alamos.

B. “Employee” means a person, other than a Student Employee, who perform works for an Employer on a full-time, part-time, seasonal, or temporary basis for monetary compensation within Los Alamos County. Employee shall not include any person who is excluded from the definition of Employee under Section 12.4(D) herein.

C. “Employer” means every person, firm, partnership, association, company, or corporation of any kind that maintains a business location within 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 or Student Employee.

D. “Minimum Wage” means the minimum hourly rate of monetary compensation for work as specified in this Article.

E. “Student Employee” means a person under nineteen years of age enrolled in a primary or secondary school who performs work for an Employer on a full-time, part-time, seasonal, or temporary basis for monetary compensation within Los Alamos County. Student Employee shall not include any person who is excluded from the definition of Employee under Section 12.4(D) herein.

F. “Tip” means gratuity earned by an employee for providing service performed for the customer. Tip shall include only tips actually received by an employee as money belonging to the employee. Where employees practice tip pooling or splitting, as where waitstaff give a portion of their tips to bus persons, both the actual amounts retained by the waitstaff 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.

Section 12.4. Applicability.

A. This Ordinance shall be effective within the incorporated boundaries of Los Alamos County.

B. Los Alamos County government shall pay the minimum wage established by this Ordinance to its employees. However, the provisions of this sub-section are expressly limited and subject to collective bargaining agreements between the County and any bargaining unit.

C. Employers shall pay the minimum wage established by this Ordinance.

D. However, the following shall not be considered employees entitled to the minimum wage established by this Ordinance:

1. An individual employed by the United States, the State or any political subdivision of the State other than Los Alamos County;

2. An individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;

3. An individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis;

4. A salesperson or employee compensated upon piecework, flat rate schedules or commission basis;
5. An apprentice in a registered apprentice program recognized by the State of New Mexico Apprenticeship and Training Committee or the Federal Bureau of Apprenticeship and Training, as well as any apprentice participating in an apprenticeship program providing significant instructional and practical experience offered by a 501C(3);
6. A G.I. bill trainee during training;
7. A temporary employee of an educational, charitable or religious youth camp or retreat where room and board is provided to the employee, or if a day camp, where board only is provided. To qualify under this exemption the employer must hold a valid certificate issued annually by the director of the Labor Relations Division of the Work Force Solutions department of the State of New Mexico pertaining to exemption of seasonal employees;
8. Any employee who is a parent, spouse, child or other member of the employer's immediate family. For purposes of this subsection, the employer shall include any firm, partnership, association, company, or corporation of any kind where the firm, partnership, association, company, or corporation is wholly owned by employee's parent, spouse, child or other member of the employer's immediate family.
9. An intern working for a business for academic credit in connection with a course of study at an accredited school, college or university; and
10. A person working for a business in connection with a court-ordered community service program.

Section 12.5. Minimum Wage Payment Requirements.

A. Except as provided in Subsection B and C, the minimum wage paid to an employee shall be fifteen dollars and zero cents (\$15.00) per hour. Beginning July 1, 2025, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's percentage increase, if any, in the Customer Price Index for the Western Region for Urban Wage Earners and Clerical Workers. The County shall post the minimum wage established by this Ordinance on the County website after this Ordinance becomes effective and prior to each adjustment of the minimum wage.

B. The minimum wage paid to a student employee shall be thirteen dollars and fifty cents (\$13.50) per hour. That wage will increase by the same percentage increase, if any, in the Customer Price Index for the Western Region for Urban Wage Earners and Clerical Workers, and simultaneous with the minimum wage increase provided for in Section 12.5(A).

C. An employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions shall be paid at least a base wage of three dollars and seventy-five cents (\$3.75) per hour. That wage will increase by the same percentage increase, if any, in the Customer Price Index for the Western Region for Urban Wage Earners and Clerical Workers, and simultaneous with the minimum wage increase provided for in Section 12.5(A). The employer may consider tips and commissions as part of wages, but the tips and commissions combined with employer's payment of wages to the employee shall not equal less than the minimum wage as provided in subsection A of this section. In the event an employee earns insufficient tips and/or

commissions combined with the base wage to receive a wage at least equal to the minimum wage established by this Ordinance, the employer shall make up the difference to ensure the employee receives a wage equal to the minimum wage established by this Ordinance. All tips received by such employee shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees. Where employees practice tip pooling or splitting (as where staff give a portion of their tips to bus persons), only the amount actually retained by each employee shall be considered part of the employee's wages.

Section 12.6. Prohibition Against Retaliation and Circumvention.

A. It is unlawful for any employer or employer's agent or representative to discharge, demote, deny promotion to or in any way discriminate against any employee in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to this Ordinance or assisting another person to do so.

Section 12.7. Notice Posting and Records.

A. All employers and the Los Alamos County government shall post and display, in a prominent location in English and Spanish, that the business is in compliance with the provisions of this Ordinance and shall include the text of Sections 12.5, 12.6, and 12.7 of this Ordinance.

B. Employers and the Los Alamos County government 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 12.8. Remedies and Penalties.

A. It is unlawful for any employer to violate any duty imposed by this Ordinance. An employer violating this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be sentenced in accordance with Section 1-8 of the Los Alamos County Code. An employer violating any of the requirements of this Ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person as to which any such violation has occurred.

B. The County, any individual aggrieved by a violation of this Ordinance, or any entity whose members have been aggrieved by a violation of this Ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this Ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due; damages equal to twice the amount of any wages due, as well as injunctive relief, and reasonable attorney's fees and costs.

C. The remedies provided in this Ordinance are not exclusive, and nothing in this Ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

Section 12.9. Severability.

If any section, paragraph, clause or provision of this Code Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Code Ordinance.

Section 12.10. 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.

Secs. 12-11 – 12-30 Reserved.

Section 2 - Effective Date. Subsequent to the publication of this ordinance's notice of adoption, this Code Ordinance shall become effective on July 1, 2024.

Section 3 - Repealer. All other ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 30th day of January 2024.

INCORPORATED COUNTY OF LOS ALAMOS

Council Chair

ATTEST:

Naomi D. Maestas,
Los Alamos County Clerk