

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 6 DAY LABORERS
PART 2 DAY LABOR SERVICE AGENCIES AND THIRD PARTY EMPLOYERS DUTIES

11.6.2.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions, Labor Relations Division.
[11.6.2.1 NMAC - N, 12-15-08]

11.6.2.2 SCOPE: All day labor and third party employers in New Mexico.
[11.6.2.2 NMAC - N, 12-15-08]

11.6.2.3 STATUTORY AUTHORITY: Section 50-15-1 to 50-15-7 NMSA 1978.
[11.6.2.3 NMAC - N, 12-15-08]

11.6.2.4 DURATION: Permanent.
[11.6.2.4 NMAC - N, 12-15-08]

11.6.2.5 EFFECTIVE DATE: December 15, 2008, unless a later date is cited at the end of a section.
[11.6.2.5 NMAC - N, 12-15-08]

11.6.2.6 OBJECTIVE: The objective of this rule is to establish regulations necessary for the enforcement of the Day Laborer Act.
[11.6.2.6 NMAC - N, 12-15-08]

11.6.2.7 DEFINITIONS: [RESERVED]

11.6.2.8 DUTIES APPLICABLE TO DAY LABOR SERVICE AGENCIES AND THIRD-PARTY EMPLOYERS: A day labor service agency and third-party employer shall:

- A. compensate a day laborer for all hours worked or otherwise due and owed to the day laborer;
- B. compensate day laborers for hours worked by providing or making available commonly accepted payment instruments that are payable in cash, on demand, at a financial institution;
- C. before or at the time of payment of wages, provide each day laborer with an itemized statement of payment with the laborer's name, the amount of time worked, the rate of pay and detail regarding each deduction made from wages, which shall include no less than the purpose of the deduction and the amount of the deduction;
- D. not allow any deductions made other than those required by federal or state law to reduce a day laborer's wages below the federal minimum wage for the hours worked;
- E. maintain true and accurate records of the day laborers employed and of the hours worked and wages paid to the day laborers for at least one year after the entry of the record; such records shall be kept as provided for herein and shall be open at all reasonable hours to the inspection of the director of the department or his or her agents.

[11.6.2.8 NMAC - N, 12-15-08]

11.6.2.9 DUTIES APPLICABLE TO DAY LABOR SERVICE AGENCIES ONLY:

- A. A day labor service agency shall not restrict the right of a day laborer to accept a permanent position with a third-party employer to whom the day laborer has been referred for work or otherwise restrict the right of a third-party employer to offer employment to a day laborer.
- B. A day labor service agency shall keep the official notice of the Day Laborer Act, furnished by the department of workforce solutions without charge, posted in a conspicuous place on or about the premises where the DLSA is hiring, registering or otherwise offering employment or payment to any day laborer seeking employment. A day labor service agency shall also provide an 8.5 x 11 size copy of the official notice of the Day Labor Act, provided by the department without charge, to each day laborer with each payment statement.
- C. A day labor service agency may collect a reasonable placement fee from a third-party employer.

[11.6.2.9 NMAC - N, 12-15-08]

11.6.2.10 CHECK CASHING SERVICES; NOTICES; WAIVERS; PENALTIES:

A. If a day labor service agency provides a check cashing service, is a check cashing service, or allows a check cashing service to operate on its premises, it cannot charge a day laborer an amount in excess of two dollars (\$ 2.00) for cashing a check or payment instrument that is issued by the agency.

B. A day labor service agency or a check cashing service that is operating within the office of a day labor service agency shall post a notice clearly visible in the area where it cashes checks or payment instruments, that clearly states limitations on the fee amount and its fee for cashing a check or payment instrument.

C. A day labor service agency or a check cashing service operating on the premises of a day labor service agency shall not charge any fees for cashing a check or payment instrument unless the day laborer is given the option of being paid with a check or payment instrument that is payable without a fee at a local financial institution and the day laborer voluntarily chooses to cash the check with the day labor service agency or at a check cashing service operating on the premises of a day labor service agency.

(1) If the day laborer elects to cash the check with the day labor service agency or a check cashing service operating on the premises of a day labor service agency, the day labor service agency must have the day laborer voluntarily sign a waiver in plain language. When a day laborer is limited English proficient, the day labor service agency is responsible for providing a waiver that is translated into the day laborer's primary language, indicating that the day laborer is aware they have the right to be paid with a payment instrument that can be cashed at a bank or other local financial institution free of charge and they have voluntarily elected to cash their check with the day labor service agency or check cashing service. This waiver must be signed each time the day laborer cashes a check with the day labor service agency or with a check cashing service operating on the premises of a day labor services agency.

(2) Waiver(s) must be kept on file for one (1) year from the date signed and shall be open at all reasonable hours to the inspection of the director of the department or his or her agents.

D. The day labor service agency must provide current and accurate information with the name, address and hours of a local financial institution where checks can be cashed without a fee, on the notice form provided by the department. This information shall be posted in an area where payment is made or checks are cashed, and shall be clearly visible and easily readable.

E. The notices required by this section shall be posted in English, Spanish, and any other written language where a high percentage of the workers speak that language, and will be provided by the department free of charge. The day labor service agency shall be responsible for posting the signs, completing blank sections with accurate information and ensuring the accuracy of any information they provide on the sign. In areas where a day labor service agency employs Navajo workers and the check cashing service cashes checks of Navajo workers, notices shall be provided by the department and posted in Navajo.

F. Failure of the day labor service agency to post notices or provide current and accurate check cashing information or local financial institution information as provided herein is a violation of these regulations and the Day Labor Act.

[11.6.2.10 NMAC - N, 12-15-08]

HISTORY OF 11.6.2 NMAC: [RESERVED]