

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 6 DAY LABORERS
PART 3 DAY LABOR COMPLAINTS AND PENALTIES

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

11.6.3.2 SCOPE: All day labor employers in New Mexico.
[11.6.3.2 NMAC - N, 12-15-08]

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

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

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

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

11.6.3.7 DEFINITIONS: [RESERVED]

11.6.3.8 DAY LABOR ACT COMPLAINTS AND PROCEDURES:

A. Complaint forms alleging a violation of the Day Laborer Act are available at the Department of Workforce Solutions, 625 Silver Ave SW Suite 410 Albuquerque, NM 87102, and on the department of workforce solutions website (www.dws.state.nm.us), in English and Spanish.

B. Day Laborer Act complaint forms should be completed in English or Spanish, signed and returned to the Department Of Workforce Solutions, 625 Silver Ave SW Suite 410, Albuquerque, NM 87102.

C. Upon receiving a complaint of a violation of the act containing sufficient information, the department of workforce solutions will notify the affected employer of the day laborer claim filed against him/her or violation(s) of the act and allow ten (10) business days for him/her to file a written response. If the day labor service agency or third party employer does not respond, a finding will be made in favor of the complainant or the department. If the day labor service agency or third party employer disputes the claim, his/her written response will be given to the day laborer or the department, who will be allowed ten (10) business days in which to rebut the claim in writing.

D. A department of workforce solutions administrative law judge ALJ(s) may schedule an administrative hearing when, in their judgment, it would facilitate resolution of the complaint. The conduct of the hearing is governed by the procedures described in NMSA 1978, 50-1-2 and pursuant regulations.

E. The ALJ(s) may issue a subpoena duces tecum to compel the production of records they believe are necessary for the resolution of the complaint.

F. In every case in which a hearing has been completed, or in which the pleadings are sufficiently complete and a hearing is deemed unnecessary, or whenever they otherwise have sufficient evidence upon which to base their determination, the ALJ(s) will issue a written decision as to whether the Day Labor Act has been violated. In light of the transitory nature of day labor, the division will strive to complete determinations as quickly as possible, and no later than sixty (60) days after completion of the hearing or after a determination is made that the evidence is otherwise sufficient, unless good cause exists.

G. The ALJ(s) may, upon receipt of written assignment by the day laborer and pursuant to the discretion of the director, file complaints in any magistrate or metropolitan court in the state in order to resolve wage disputes or correct violations arising under Chapter 50 of the New Mexico state statutes, when in the ALJ(s) judgment it is appropriate for the resolution of the claim.

H. The ALJ(s) may, upon receipt of written assignment by the day laborer and pursuant to the discretion of the director, file a proof of claim on behalf of a day laborer in any U.S. bankruptcy court, when in the ALJ(s) judgment it is appropriate for the resolution of the claim.

I. The director of the department of workforce solutions, or his or her designee, shall, when satisfied as to the justice of any claim, cooperate with any employee in the enforcement of any claim against his employer, and refer violations of the Day Labor Act to the district attorneys office of the district in which the violation occurred for criminal prosecution, pursuant to NMSA 50-1-7.

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

11.6.3.9 VIOLATIONS, MISDEMEANORS AND PENALTIES:

A. Any day labor service agency, or its employee or agent, or any third-party employer or its employee or agent, who hires a day laborer and fails to pay a day laborer for work performed or time due, is liable for full payment of the wages not paid and civil damages equal to twice the value of the unpaid wages, court costs, and attorney fees and costs.

B. Any day labor service agency, or its employee or agent, or any third-party employer or its employee or agent, who violates the provisions of the Day Laborer Act, is for a first offense guilty of a misdemeanor, and shall be sentenced pursuant to Section 31-19-1 NMSA 1978. Offenders who violate this Act a second or subsequent times shall be guilty of a misdemeanor, shall be sentenced pursuant to Section 31-19-1 NMSA 1978, and shall be fined no less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) for each offense for which the offender is convicted, which fine shall not be suspended, deferred or taken under advisement.

C. In addition to any other fees or fines that may be imposed on an offender convicted pursuant to this section, the court may order the offender to pay restitution pursuant to Section 31-17-1 NMSA 1978.

D. Each occurrence of a violation for which a person is convicted is a separate offense.

E. Multiple violations arising from transactions with the same person or multiple violations arising from transactions with different people shall be considered separate occurrences.

F. It shall not be a defense to any action brought pursuant to this section that the plaintiff or complainant is an undocumented worker or otherwise has questionable immigrant status.

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

HISTORY OF 11.6.3 NMAC: [RESERVED]