

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 6 DAY LABORERS
PART 1 GENERAL PROVISIONS

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

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

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

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

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

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

11.6.1.7 DEFINITIONS:

A. "Check cashing service" means a business that offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments.

B. "Day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional, irregular or for a limited time period.

C. "Day labor service agency" means an entity, including a labor broker or labor pool, that provides day laborers to third-party employers and that charges the third-party employer for the service of providing day laborers for employment offered by the employer. The provisions of the Workers' Compensation Act [52-1-1 et. seq. NMSA 1978] shall apply to day labor service agencies.

D. "Day laborer" means a person who contracts for day labor employment with a day labor service agency.

E. "Department" means the New Mexico department of workforce solutions.

F. "High percentage of workers" means 10% or more of the day laborers that a day labor service agency employs in a calendar year.

G. "Hours worked" means time a day laborer spent actually working. Time of work begins when the employer begins to control the day laborers time. Time spent by a day laborer in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked, consistent with existing wage and hour law. A day laborer who is required to remain waiting on call on the day labor service agency's premises or on the third-party employer's premises is working while waiting, consistent with existing wage and hour law. Further, any preparation time required by the day labor service agency or third-party employer at a day labor service agency or an employer's premises or at a prescribed work place will be counted as hours worked, consistent with existing wage and hour law.

H. "Limited English proficient" means a day laborer who does not speak English as their primary language and who has a limited ability to read, speak, write or understand English.

I. "Payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked.

J. "Third-party employer" means a person or entity that contracts with a day labor service agency for the employment of day laborers.

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

11.6.1.8 EXEMPT EMPLOYERS: The following agencies that provide employees on a short-term or otherwise temporary basis are exempted from the provisions of the Day Labor Act and these regulations:

- A. business entities registered as farm labor contractors;
 - B. temporary services employment agencies where advanced applications, a screening process and job interviews are required;
 - C. a labor union hiring hall; and
 - D. a labor bureau or employment office operated by a business entity for the sole purpose of employing a person for its own use.
- [11.6.1.8 NMAC - N, 12-15-08]

11.6.1.9 TIME FRAMES FOR PAYMENT:

- A. Where day labor employment lasts less than one week, wages shall be paid at the end of each workday or sooner if requested by the day laborer.
 - B. Where day labor employment lasts more than a week, wages shall be paid at the end of each workweek or sooner if requested by the day laborer.
- [11.6.1.9 NMAC - N, 12-15-08]

HISTORY OF 11.6.1 NMAC: [RESERVED]