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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **LABOR RELATIONS DIVISION OF**
3 **THE NEW MEXICO DEPARTMENT OF**
4 **WORKFORCE SOLUTIONS,**

Court of Appeals of New Mexico
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Cynthia A. Hernandez-Madrid
Acting Chief Clerk

5 Plaintiff-Appellee,

6 v.

No. A-1-CA-40773

7 **THE 505 BURGERS, LLC; THE**
8 **505 BURGERS FARMINGTON, LLC;**
9 **and MORGAN L. NEWSOM, individually,**

10 Defendants-Appellants.

11 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**
12 **Robert A. Aragon, District Court Judge**

13 N.M. Department of Workforce Solutions
14 Richard L. Branch
15 Albuquerque, NM

16 for Appellee

17 Geiger Law Firm, LLC
18 Mark P. Geiger
19 Albuquerque, NM

20 for Appellants

21 **MEMORANDUM OPINION**

22 **IVES, Judge.**

23 {1} The 505 Burgers Company and its owner Morgan Newsom (collectively,
24 Defendants), appeal from a district court judgment awarding Plaintiff damages under

1 the Wage Payment Act. We issued a calendar notice proposing to affirm. Defendants
2 have responded with a memorandum in opposition. We affirm.

3 {2} The dispositive issue in this appeal is whether the lawsuit was barred under
4 the applicable statute of limitations, which states,

5 A civil action to enforce any provision of Chapter 50, Article 4 NMSA
6 1978 shall be commenced within three years after a violation last
7 occurs. The three-year period shall be tolled during a labor relations
8 division of the workforce solutions department investigation of an
9 employer.

10 NMSA 1978, § 37-1-5 (2009).

11 {3} Here, the parties acknowledged that the limitations period began to run in
12 February 2015. [MIO 5] The wage claims were filed in April 2017, at which point
13 approximately two years and two months of the limitations period had run. [RP 261,
14 FOF No. 13] The Department of Workforce Solutions (DWS) wage claim
15 investigation concluded in February 2020. [RP 261, FOF No. 14] The district court
16 complaint was filed in October 2020. [RP 1] The eight-month delay between the
17 conclusion of the investigation and the filing of the complaint, when combined with
18 the preinvestigation delay, means that the limitations period had run for a total of
19 two years and ten months. The limitations period set forth in Section 37-1-5 had
20 therefore not yet run when the complaint was filed.

21 {4} Defendants point out that DWS stayed their investigation for a period of
22 nineteen months, from June 2017 through the end of December 2018. [DS 3] This

1 period of stay is consistent with the district court findings, which state that the
2 investigation began in January 2019 and concluded in February 2020. [RP 261, FOF
3 No. 14] Defendants argue that the tolling period should not commence on the filing
4 of the claim, but instead should be triggered when DWS actively works on the case.
5 In other words, they would like the nineteen-month delay to be part of the running
6 of the limitations period. Here, the district court deferred to DWS’s longstanding
7 construction of Section 37-1-5, which is to begin the tolling period at the time the
8 wage complaint is filed. [RP 262, FOF No. 17] This conclusion is consistent with
9 the general rule of statutory construction that we do not read language into a statute
10 that is not there—in this case an alleged requirement that tolling does not begin until
11 DWS actively looks into the complaint. *See State v. Penman*, 2022-NMCA-065,
12 ¶ 21, 521 P.3d 96 (stating that this Court will not read language into a statute that is
13 not there). As such, we conclude that the limitations period was satisfied in this case.

14 {5} For the reasons set forth above, we affirm.

15 {6} **IT IS SO ORDERED.**

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17 _____
ZACHARY A. IVES, Judge

18 **WE CONCUR:**

19 
20 _____
KRISTINA BOGARDUS, Judge

21 
22 _____
JACQUELINE R. MEDINA, Judge