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HOUSE BILL 250

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Randal S. Crowder

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE WORKERS'
COMPENSATION ACT TO REESTABLISH RETURN TO WORK AND CLARIFY
BENEFIT ENTITLEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 52-1-25.1 NMSA 1978 (being Laws 1990
(2nd S.S.), Chapter 2, Section 10, as amended) is amended to
read:

"52-1-25.1. TEMPORARY TOTAL DISABILITY--RETURN TO WORK.--

A. As used in the Workers' Compensation Act,
"temporary total disability" means the inability of a worker,
by reason of accidental injury arising out of and in the course
of the worker's employment, to perform the duties of that
employment prior to the date of the worker's maximum medical
improvement.

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1 B. If, prior to the date of maximum medical
2 improvement, an injured worker's health care provider releases
3 the worker to return to work, the worker is not entitled to
4 temporary total disability benefits if:

5 (1) [~~the~~] an employer offers work at or above
6 the worker's pre-injury wage [~~or~~] within medical restrictions,
7 if any, as stated by the health care provider pursuant to
8 Section 52-1-49 NMSA 1978, and the worker rejects the offered
9 employment;

10 (2) the worker accepts employment with
11 [~~another~~] any employer at or above the worker's pre-injury
12 wage; or

13 (3) the worker is terminated for misconduct
14 connected with the employment; provided that if an employer
15 terminates the worker for a pretextual reason, including an
16 attempt to avoid payment of benefits to the worker or as
17 retaliation against the worker for seeking benefits, the worker
18 shall be entitled to temporary total disability benefits and
19 the employer shall be subject to penalties as set forth in
20 Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

21 C. If, prior to the date of maximum medical
22 improvement, an injured worker's health care provider releases
23 the worker to return to work and the employer offers work at
24 less than the worker's pre-injury wage, the worker is disabled
25 and shall receive temporary total disability compensation

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1 benefits equal to two-thirds of the difference between the
2 worker's pre-injury wage and the worker's post-injury wage,
3 unless the worker rejects the offered employment.

4 D. If the worker returns to work pursuant to the
5 provisions of [~~Subsection B~~] Subsections B and C of this
6 section, the employer shall continue to provide reasonable and
7 necessary medical care pursuant to Section 52-1-49 NMSA 1978."

8 SECTION 2. Section 52-1-26 NMSA 1978 (being Laws 1987,
9 Chapter 235, Section 12, as amended) is amended to read:

10 "52-1-26. PERMANENT PARTIAL DISABILITY.--

11 A. As a guide to the interpretation and application
12 of this section, the policy and intent of this legislature is
13 declared to be that every person who suffers a compensable
14 injury with resulting permanent partial disability should be
15 provided with the opportunity to return to gainful employment
16 as soon as possible with minimal dependence on compensation
17 awards.

18 B. As used in the Workers' Compensation Act,
19 "partial disability" means a condition whereby a worker, by
20 reason of injury arising out of and in the course of
21 employment, suffers a permanent impairment.

22 C. Permanent partial disability shall be determined
23 by calculating the worker's impairment as modified by [~~his~~] the
24 worker's age, education and physical capacity, pursuant to
25 Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that,

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1 regardless of the actual calculation of impairment as modified
2 by the worker's age, education and physical capacity, the
3 percentage of disability awarded shall not exceed ninety-nine
4 percent.

5 D. ~~[If, on or after the date of maximum medical~~
6 ~~improvement, an injured worker returns to work at a wage equal~~
7 ~~to or greater than the worker's pre-injury wage]~~ The worker's
8 permanent partial disability rating shall be equal to ~~[his]~~ the
9 worker's impairment and shall not be subject to the
10 modifications calculated pursuant to Sections 52-1-26.1 through
11 52-1-26.4 NMSA 1978, if on or after the date of maximum medical
12 improvement:

13 (1) an employer offers employment at or above
14 the worker's pre-injury wage within medical restrictions, if
15 any, as stated by the health care provider pursuant to Section
16 52-1-49 NMSA 1978, and the worker rejects the offered
17 employment;

18 (2) the worker accepts employment with any
19 employer at or above the worker's pre-injury wage; or

20 (3) the worker is terminated for misconduct
21 connected with the employment; provided that if an employer
22 terminates the worker for a pretextual reason, including an
23 attempt to avoid payment of benefits to the worker or as
24 retaliation against the worker for seeking benefits, the worker
25 shall be entitled to modifier benefits and the employer shall

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1 be subject to penalties as set forth in Sections 52-1-28.1 and
2 52-1-28.2 NMSA 1978.

3 E. In considering a claim for permanent partial
4 disability, a workers' compensation judge shall not receive or
5 consider the testimony of a vocational rehabilitation provider
6 offered for the purpose of determining the existence or extent
7 of disability."

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