

1 AN ACT

2 RELATING TO WORKERS' COMPENSATION; DEFINING "EXTRA-HAZARDOUS
3 EMPLOYER" IN THE WORKERS' COMPENSATION ACT; RAISING THE
4 MINIMUM THRESHOLD FOR A MANDATORY SAFETY VISIT; CLARIFYING
5 COMPENSATION BENEFITS TO BENEFICIARIES; ALLOWING ALL PARTIES
6 TO OBTAIN A PERIODIC EXAMINATION OF THE WORKER FROM A HEALTH
7 CARE PROVIDER OF CHOICE; REPLACING THE SAFETY AND FRAUD
8 DIVISION IN THE WORKERS' COMPENSATION ADMINISTRATION WITH AN
9 ENFORCEMENT BUREAU; ALLOWING A PERSON EMPLOYED AS AN
10 OMBUDSMAN PURSUANT TO THE WORKERS' COMPENSATION
11 ADMINISTRATION ACT TO HOLD ANOTHER POSITION IN THE
12 ADMINISTRATION UPON LEAVING THE POSITION OF OMBUDSMAN;
13 ALLOWING THE WORKERS' COMPENSATION ADMINISTRATION TO SERVE
14 PARTIES IN FORMATS IN ADDITION TO CERTIFIED MAIL; REMOVING
15 THE REQUIREMENT THAT HEARINGS ON WORKERS' COMPENSATION CLAIMS
16 BE HELD IN THE COUNTY IN WHICH THE INJURY OCCURRED; PROVIDING
17 PENALTIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
18 SECTION OF LAW IN LAWS 2003.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986,
22 Chapter 22, Section 26, as amended by Laws 2003, Chapter 259,
23 Section 1 and by Laws 2003, Chapter 263, Section 1) is
24 amended to read:

25 "52-1-1.1. DEFINITIONS.--As used in Chapter 52,

1 Articles 1 through 6 NMSA 1978:

2 A. "controlled insurance plan" means a plan of
3 insurance coverage that is established by an owner or
4 principal contractor that requires participation by
5 contractors or subcontractors who are engaged in the
6 construction project, including coverage plans that are for a
7 fixed term of coverage on a single construction site;

8 B. "director" means the director of the workers'
9 compensation administration;

10 C. "division" means the workers' compensation
11 administration;

12 D. "extra-hazardous employer" means an employer
13 whose injury frequencies substantially exceed those that may
14 reasonably be expected in that employer's business or
15 industry;

16 E. "rolling wrap-up or consolidated insurance
17 plan" means coverage for an ongoing project or series of
18 projects in which the common insurance program remains in
19 place indefinitely and contracted work is simply added as it
20 occurs under the control of one owner or principal
21 contractor;

22 F. "workers' compensation judge" means an
23 individual appointed by the director to act as a workers'
24 compensation judge in the administration of the Workers'
25 Compensation Act or the New Mexico Occupational Disease

1 Disablement Law;

2 G. "workman" or "workmen" means worker or workers;

3 H. "Workmen's Compensation Act" means the Workers'
4 Compensation Act; and

5 I. "workmen's compensation administration" or
6 "administration" means the workers' compensation
7 administration."

8 SECTION 2. Section 52-1-6.2 NMSA 1978 (being Laws 1989,
9 Chapter 263, Section 92, as amended) is amended to read:

10 "52-1-6.2. SAFETY PROGRAMS--INSPECTIONS--PENALTIES--
11 BONUSES.--

12 A. Every employer subject to the provisions of the
13 Workers' Compensation Act who has an annual workers'
14 compensation premium liability of fifteen thousand dollars
15 (\$15,000) or more or who is a certified self-insurer shall
16 receive an annual safety inspection. The director shall
17 determine the adequacy and structure of the safety
18 inspection, including establishing procedures for appropriate
19 self-inspection. For any employer who is not self-insured,
20 inspections and recommendations for creating a safer
21 workplace shall be provided upon request by every insurer
22 providing workers' compensation insurance in this state to
23 its workers' compensation insurance policyholders. To
24 enforce this provision, the director may assess a penalty not
25 to exceed five thousand dollars (\$5,000) against any

1 employer.

2 B. The administration shall develop safety
3 programs for employers with an annual workers' compensation
4 premium liability of less than fifteen thousand dollars
5 (\$15,000).

6 C. The superintendent of insurance may assess a
7 penalty against an insurer that refuses to provide annual
8 safety inspections and recommendations. The penalty shall
9 not exceed five thousand dollars (\$5,000) per insurer per
10 violation.

11 D. Any employer who is subject to the provisions
12 of the Workers' Compensation Act may implement a safety
13 program, as approved by the superintendent of insurance, that
14 provides for bonuses of up to ten percent of a worker's wage
15 to be paid to a worker who fulfills criteria established by
16 the employer for eligibility for the bonus. The criteria
17 shall incorporate the concept of bonuses based upon a stated
18 number of accident-free work days completed by the worker.
19 Any bonus paid under a program authorized by this section
20 shall not be included in computing a worker's average wage
21 for establishing workers' compensation insurance premiums or
22 benefits.

23 E. The administration shall develop a program to
24 identify extra-hazardous employers. The administration shall
25 notify each identified extra-hazardous employer and the

1 insurance carrier for that employer that the employer has
2 been identified as an extra-hazardous employer.

3 F. An employer that receives notification under
4 Subsection E of this section shall obtain a safety
5 consultation within thirty days from the administration's
6 safety consultants, the employer's insurer or another
7 professional source approved by the director for that
8 purpose. The safety consultant shall file a written report
9 with the director and the employer setting out any hazardous
10 conditions or practices identified by the safety
11 consultation.

12 G. The employer, in consultation with the safety
13 consultant, shall, within a reasonable time, formulate a
14 specific accident-prevention plan that addresses the hazards
15 identified by the consultant. An employer that fails to
16 formulate, implement or otherwise comply with the
17 accident-prevention plan shall be subject to a penalty not to
18 exceed five thousand dollars (\$5,000)."

19 SECTION 3. Section 52-1-46 NMSA 1978 (being Laws 1959,
20 Chapter 67, Section 25, as amended) is amended to read:

21 "52-1-46. COMPENSATION BENEFITS FOR DEATH.--Subject to
22 the limitation of compensation payable under Subsection G of
23 this section, if an accidental injury sustained by a worker
24 proximately results in the worker's death within the period
25 of two years following the worker's accidental injury,

1 compensation shall be paid in the amount and to the persons
2 entitled thereto as follows:

3 A. if there are no eligible dependents, except as
4 provided in Subsection C of Section 52-1-10 NMSA 1978 of the
5 Workers' Compensation Act, the compensation shall be limited
6 to the funeral expenses, not to exceed seven thousand five
7 hundred dollars (\$7,500), and the expenses provided for
8 medical and hospital services for the deceased, together with
9 all other sums that the deceased should have been paid for
10 compensation benefits up to the time of the worker's death;

11 B. if there are eligible dependents at the time of
12 the worker's death, payment shall consist of a sum not to
13 exceed seven thousand five hundred dollars (\$7,500) for
14 funeral expenses and expenses provided for medical and
15 hospital services for the deceased, together with such other
16 sums as the deceased should have been paid for compensation
17 benefits up to the time of the worker's death and
18 compensation benefits to the eligible dependents as
19 hereinafter specified, subject to the limitations on maximum
20 periods of recovery provided in Sections 52-1-41 through
21 52-1-43 and 52-1-47 NMSA 1978;

22 C. if there are eligible dependents entitled
23 thereto, compensation shall be paid to the dependents or to
24 the person authorized by the director or appointed by the
25 court to receive the same for the benefit of the dependents

1 in such portions and amounts, to be computed and distributed
2 as follows:

3 (1) if there is no widow or widower entitled
4 to compensation, sixty-six and two-thirds percent of the
5 average weekly wage of the deceased to the child or children;

6 (2) if there are no children, sixty-six and
7 two-thirds percent of the average weekly wage of the deceased
8 to the widow or widower, until remarriage; or

9 (3) if there is a widow or widower and
10 children:

11 (a) if all the children are living with
12 the widow or widower, forty-five percent of the weekly
13 compensation benefits as provided in Sections 52-1-41 through
14 52-1-43 and 52-1-47 NMSA 1978 to the widow or widower and
15 fifty-five percent divided equally to the children; or

16 (b) if no child is living with a widow
17 or widower, forty percent of the weekly compensation benefits
18 as provided in Sections 52-1-41 through 52-1-43 and 52-1-47
19 NMSA 1978 to the widow or widower and sixty percent divided
20 equally to the children; and

21 (4) two years' compensation benefits in one
22 lump sum shall be payable to a widow or widower upon
23 remarriage; however, the total benefits shall not exceed the
24 maximum compensation benefit as provided in Subsection B of
25 this section;

1 D. if there is neither widow, widower nor
2 children, compensation may be paid to the father and mother
3 or the survivor of them, if dependent to any extent upon the
4 worker for support at the time of the worker's death,
5 twenty-five percent of the average weekly wage of the
6 deceased, and in no event shall the maximum compensation to
7 such dependents exceed the amounts contributed by the
8 deceased worker for their care; provided that if the father
9 and mother, or the survivor of them, was totally dependent
10 upon such worker for support at the time of the worker's
11 death, they shall be entitled to fifty percent of the average
12 weekly wage of the deceased;

13 E. if there is neither widow, widower nor children
14 nor dependent parent, then to the brothers and sisters and
15 grandchildren if actually dependent to any extent upon the
16 deceased worker for support at the time of the worker's
17 death, thirty-five percent of the average weekly wage of the
18 deceased worker with fifteen percent additional for brothers
19 and sisters and grandchildren in excess of two, with a
20 maximum of sixty-six and two-thirds percent of the average
21 weekly wage of the deceased, and in no event shall the
22 maximum compensation to partial dependents exceed the
23 respective amounts contributed by the deceased worker for
24 their care;

25 F. in the event of the death or remarriage of the

1 widow or widower entitled to compensation benefits as
2 provided in this section, the surviving children shall then
3 be entitled to compensation benefits computed and paid as
4 provided in Paragraph (1) of Subsection C of this section for
5 the remainder of the compensable period. In the event
6 compensation benefits payable to children as provided in this
7 section are terminated as provided in Subsection E of Section
8 52-1-17 NMSA 1978, a surviving widow or widower shall then be
9 entitled to compensation benefits computed and paid as
10 provided in Paragraphs (2) and (4) of Subsection C of this
11 section for the remainder of the compensable period; and

12 G. no compensation benefits payable by reason of a
13 worker's death shall exceed the maximum weekly compensation
14 benefits as provided in Sections 52-1-41 through 52-1-43 and
15 52-1-47 NMSA 1978, and no dependent or any class thereof,
16 other than a widow, widower or children, shall in any event
17 be paid total benefits in excess of seven thousand five
18 hundred dollars (\$7,500) exclusive of funeral expenses and
19 the expenses provided for medical and hospital services for
20 the deceased paid for by the employer."

21 SECTION 4. Section 52-1-51 NMSA 1978 (being Laws 1929,
22 Chapter 113, Section 19, as amended) is amended to read:

23 "52-1-51. PHYSICAL EXAMINATIONS OF WORKER--INDEPENDENT
24 MEDICAL EXAMINATION--UNSANITARY OR INJURIOUS PRACTICES BY
25 WORKER--TESTIMONY OF HEALTH CARE PROVIDERS.--

1 A. In the event of a dispute between the parties
2 concerning the reasonableness or necessity of medical or
3 surgical treatment, the date upon which maximum medical
4 improvement was reached, the correct impairment rating for
5 the worker, the cause of an injury or any other medical
6 issue, if the parties cannot agree upon the use of a specific
7 independent medical examiner, either party may petition a
8 workers' compensation judge for permission to have the worker
9 undergo an independent medical examination. If a workers'
10 compensation judge believes that an independent medical
11 examination will assist the judge with the proper
12 determination of any issue in the case, including the cause
13 of the injury, the workers' compensation judge may order an
14 independent medical examination upon the judge's own motion.
15 The independent medical examination shall be performed
16 immediately, pursuant to procedures adopted by the director,
17 by a health care provider other than the designated health
18 care provider, unless the employer and the worker otherwise
19 agree.

20 B. In deciding who may conduct the independent
21 medical examination, the workers' compensation judge shall
22 not designate the health care provider initially chosen by
23 the petitioner. The workers' compensation judge shall
24 designate a health care provider on the approved list of
25 persons authorized by the committee appointed by the advisory

1 council on workers' compensation to create that list. The
2 decision of the workers' compensation judge shall be final.
3 The employer shall pay for any independent medical
4 examination.

5 C. Only a health care provider who has treated the
6 worker pursuant to Section 52-1-49 NMSA 1978 or the health
7 care provider providing the independent medical examination
8 pursuant to this section may offer testimony at any workers'
9 compensation hearing concerning the particular injury in
10 question.

11 D. If, pursuant to Subsection C of Section 52-1-49
12 NMSA 1978, either party selects a new health care provider,
13 the other party shall be entitled to periodic examinations of
14 the worker by the health care provider the other party
15 previously selected. Examinations may not be required more
16 frequently than at six-month intervals; except that upon
17 application to the workers' compensation judge having
18 jurisdiction of the claim and after reasonable cause
19 therefor, examinations within six-month intervals may be
20 ordered. In considering such applications, the workers'
21 compensation judge shall exercise care to prevent harassment
22 of the claimant.

23 E. If an independent medical examination or an
24 examination pursuant to Subsection D of this section is
25 requested, the worker shall travel to the place at which the

1 examination shall be conducted. Within thirty days after the
2 examination, the worker shall be compensated by the employer
3 for all necessary and reasonable expenses incidental to
4 submitting to the examination, including the cost of travel,
5 meals, lodging, loss of pay or other like direct expense, but
6 the amount to be compensated for meals and lodging shall not
7 exceed that allowed for nonsalaried public officers under the
8 Per Diem and Mileage Act.

9 F. No attorney shall be present at any examination
10 authorized under this section.

11 G. Both the employer and the worker shall be given
12 a copy of the report of the examination of the worker made by
13 the independent health care provider pursuant to this
14 section.

15 H. If a worker fails or refuses to submit to
16 examination in accordance with this section, the worker shall
17 forfeit all workers' compensation benefits that would accrue
18 or become due to the worker except for that failure or
19 refusal to submit to examination during the period that the
20 worker persists in such failure and refusal unless the worker
21 is by reason of disability unable to appear for examination.

22 I. If any worker persists in any unsanitary or
23 injurious practice that tends to imperil, retard or impair
24 the worker's recovery or increase the worker's disability or
25 refuses to submit to such medical or surgical treatment as is

1 reasonably essential to promote the worker's recovery, the
2 workers' compensation judge may in the judge's discretion
3 reduce or suspend the workers' compensation benefits."

4 SECTION 5. Section 52-5-1.3 NMSA 1978 (being Laws 1990
5 (2nd S.S.), Chapter 2, Section 63) is amended to read:

6 "52-5-1.3. ENFORCEMENT BUREAU.--

7 A. There is created in the workers' compensation
8 administration an "enforcement bureau".

9 B. The enforcement bureau shall investigate to
10 determine whether any fraudulent conduct relating to workers'
11 compensation is being practiced. The enforcement bureau
12 shall refer to an appropriate law enforcement agency any
13 finding of fraud. For any claim pending in the
14 administration, the enforcement bureau shall also bring its
15 findings to the attention of the workers' compensation judge
16 assigned to that claim.

17 C. For the purposes of this section, "fraud"
18 includes the intentional misrepresentation of a material fact
19 resulting in workers' compensation or occupational
20 disablement coverage, the payment or withholding of benefits
21 or an attempt to obtain or withhold benefits. The
22 intentional misrepresentation of a material fact may occur
23 through the conduct, practices, omissions or representations
24 of any person. Any person found guilty of committing fraud
25 shall be sentenced pursuant to the provisions of Section

1 30-16-6 NMSA 1978 and the provisions of the Criminal
2 Sentencing Act."

3 SECTION 6. Section 52-5-1.4 NMSA 1978 (being Laws 1990
4 (2nd S.S.), Chapter 2, Section 64, as amended) is amended to
5 read:

6 "52-5-1.4. OMBUDSMAN PROGRAM.--

7 A. The director shall establish an ombudsman
8 program to assist injured or disabled workers, persons
9 claiming death benefits, employers and other persons in
10 protecting their rights and obtaining information available
11 under workers' compensation and occupational disease
12 disablement laws.

13 B. An ombudsman shall meet with or otherwise
14 provide information to injured or disabled workers,
15 investigate complaints and communicate with employers,
16 insurance carriers and health care providers on behalf of
17 injured or disabled workers. An ombudsman shall otherwise
18 assist unrepresented claimants, employers and other parties
19 to enable them to protect their rights in the workers'
20 compensation and occupational disease disablement system. At
21 least one specially qualified employee in each location that
22 the administration has an office shall be designated by the
23 director as an ombudsman, and duties described in this
24 section shall be that person's primary responsibility. The
25 director may designate additional ombudsmen and assign them

1 as the director deems appropriate.

2 C. An ombudsman need not be an attorney but shall
3 demonstrate familiarity with workers' compensation and
4 occupational disease disablement laws.

5 D. An ombudsman shall not be an advocate for any
6 person and shall restrict ombudsman's activities to providing
7 information and facilitating communication. An ombudsman
8 shall not assist a claimant, employer or any other person in
9 any proceeding beyond the informal conference held pursuant
10 to Section 52-5-5 NMSA 1978.

11 E. Each employer shall notify the employer's
12 employees of the ombudsman service in a manner prescribed by
13 the director. The notice shall include the posting of a
14 notice in one or more conspicuous places. The director shall
15 also describe clearly the availability of the ombudsmen on
16 the first report of accident form required under Section
17 52-1-58 NMSA 1978, or the first report of disablement form
18 required under Section 52-3-51 NMSA 1978."

19 SECTION 7. Section 52-5-5 NMSA 1978 (being Laws 1986,
20 Chapter 22, Section 31, as amended) is amended to read:

21 "52-5-5. CLAIMS--INFORMAL CONFERENCES.--

22 A. When a dispute arises under the Workers'
23 Compensation Act or the New Mexico Occupational Disease
24 Disablement Law, any party may file a claim with the director
25 no sooner than thirty-one days from the date of injury or the

1 occurrence of the disabling disease. The director shall
2 assist workers and employees not represented by counsel in
3 the preparation of the claim document.

4 B. The director shall prepare a form of claim,
5 which shall be available to all parties. The claim shall
6 state concisely in numbered paragraphs the questions at issue
7 or in dispute that the claimant expects to be determined with
8 sufficient particularity that the responding or opposing
9 party may be notified adequately of the claim and its basis,
10 including, if applicable, the specific benefit that is due
11 and not paid.

12 C. Upon receipt, every claim shall be evaluated by
13 the director or the director's designee, who shall then
14 contact all parties and attempt to informally resolve the
15 dispute. Within sixty days after receipt of the claim, the
16 director shall issue recommendations for resolution and serve
17 the parties with a copy. Within thirty days of receipt of
18 the recommendation of the director, each party shall notify
19 the director on a form provided by the director of the
20 acceptance or rejection of the recommendation. A party
21 failing to notify the director waives any right to reject the
22 recommendation and is bound conclusively by the director's
23 recommendation unless, upon application made to the director
24 within thirty days after the foregoing deadline, the director
25 finds that the party's failure to notify was the result of

1 excusable neglect. If either party makes a timely rejection
2 of the director's recommendation, the claim shall be assigned
3 to a workers' compensation judge for hearing.

4 D. Each party to a dispute shall have a peremptory
5 right to disqualify one workers' compensation judge; provided
6 that:

7 (1) the employer and the employer's insurer
8 shall constitute a single party for purposes of this
9 subsection;

10 (2) this peremptory right to disqualify one
11 worker's compensation judge shall not apply to the judge
12 appointed pursuant to Section 52-1-49 NMSA 1978 to render a
13 decision within seven days on a request for a different
14 health care provider; and

15 (3) no party shall be required to disqualify
16 a workers' compensation judge until a judge has been assigned
17 to a case."

18 SECTION 8. Section 52-5-6 NMSA 1978 (being Laws 1986,
19 Chapter 22, Section 32, as amended) is amended to read:

20 "52-5-6. AUTHORITY OF THE DIRECTOR TO CONDUCT
21 HEARINGS.--

22 A. Unless the parties agree otherwise, or it is
23 ordered by the workers' compensation judge or the director in
24 the case of a director's hearing, hearings shall be held at
25 an office of the workers' compensation administration that

1 is located nearest to the location of injury or disablement.
2 In determining the site of hearing, the judge or the director
3 shall consider cost-effectiveness, judicial efficiency, the
4 health and mobility of the worker and the convenience of
5 parties and witnesses. Hearings may be conducted by
6 videoconferencing or by telephone at the discretion of the
7 judge or the director.

8 B. The workers' compensation judge and the
9 director shall have the power to preserve and enforce order
10 during hearings; administer oaths; issue subpoenas to compel
11 the attendance and testimony of witnesses, the production of
12 books, papers, documents and other evidence or the taking of
13 depositions before a designated individual competent to
14 administer oaths; examine witnesses; enter noncriminal
15 sanctions for misconduct; and do all things conformable to
16 law that may be necessary to enable the judge or the director
17 to discharge the duties of the judge's or the director's
18 office effectively.

19 C. In addition to the noncriminal sanctions that
20 may be ordered by the workers' compensation judge or the
21 director, any person committing any of the following acts in
22 a proceeding before a workers' compensation judge or the
23 director may be held accountable for the person's conduct in
24 accordance with the provisions of Subsection D of this
25 section:

- 1 (1) disobedience of or resistance to any
2 lawful order or process;
- 3 (2) misbehavior during a hearing or so near
4 the place of the hearing as to obstruct it;
- 5 (3) failure to produce any pertinent book,
6 paper or document after having been ordered to do so;
- 7 (4) refusal to appear after having been
8 subpoenaed;
- 9 (5) refusal to take the oath or affirmation
10 as a witness; or
- 11 (6) refusal to be examined according to law.

12 D. The director may certify to the district court
13 of the district in which the acts were committed the facts
14 constituting any of the acts specified in Paragraphs (1)
15 through (6) of Subsection C of this section. The court shall
16 hold a hearing and, if the evidence so warrants, may punish
17 the offending person in the same manner and to the same
18 extent as for contempt committed before the court, or it may
19 commit the person upon the same conditions as if the doing of
20 the forbidden act had occurred with reference to the process
21 of or in the presence of the court."

22 SECTION 9. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2013. _____