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

(1) the employer offers work at the worker's pre-injury wage; or

(2) the worker accepts employment with another employer at the worker's pre-injury wage] and the employer does not offer work at the worker's pre-injury wage, the worker is disabled and shall receive temporary total disability compensation benefits equal to two-thirds of the worker's pre-injury wage.

C. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work and the employer offers the worker returns to work at less than the worker's pre-injury wage, the worker is disabled and shall receive temporary total disability compensation benefits equal to two-thirds of the difference between the worker's pre-injury wage and the worker's post-injury wage.

D. [If the worker returns to work pursuant to the provisions of Subsection B of this section] A worker is not entitled to temporary total disability benefits as set forth in Subsection B or C of this section if:

(1) the employer makes a bona fide work offer,
that is reasonable to the employer and the worker, at or above
the worker's pre-injury wage within medical restrictions, if
any, as stated by the health care provider pursuant to Section
52-1-49 NMSA 1978, and the worker rejects the offered
employment;

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

(3) the worker is terminated for misconduct
connected with the employment; provided that if an employer
terminates the worker for the pretextual reasons of attempting
to avoid payment of benefits to the worker or as retaliation
against the worker for seeking benefits, the worker shall be
entitled to temporary total disability benefits and the
employer shall be subject to penalties as set forth in Sections

E. Notwithstanding the provisions of this section,
the employer shall continue to provide reasonable and necessary
medical care pursuant to Section 52-1-49 NMSA 1978."

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

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

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

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

C. Permanent partial disability shall be determined by calculating the worker's impairment as modified by [his] the worker's age, education and physical capacity, pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent.

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

(1) the worker returns to work at a wage at or above the worker's pre-injury wage:
(2) the worker accepts employment with another 
employer at or above the worker's pre-injury wage;

(3) the employer makes a bona fide work offer, 
that is reasonable to the employer and the worker, at or above 
the worker's pre-injury wage within medical restrictions, if 
any, as stated by the health care provider pursuant to Section 
52-1-49 NMSA 1978, and the worker rejects the offered 
employment; or 

(4) the worker is terminated for misconduct 
connected with the employment; provided that if an employer 
terminates the worker for the pretextual reasons of attempting 
to avoid payment of benefits to the worker or as retaliation 
against the worker for seeking benefits, the worker shall be 
entitled to modifier benefits and the employer shall be subject 
to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 
NMSA 1978.

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