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SENATE BILL 249

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE WORKERS'
COMPENSATION ACT TO 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.

B. If, prior to the date of maximum medical

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1 improvement, an injured worker's health care provider releases
2 the worker to return to work, the worker is not entitled to
3 temporary total disability benefits if:

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

6 (2) the worker accepts employment with another
7 employer at the worker's pre-injury wage.

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

15 D. ~~[If the worker returns to work pursuant to the~~
16 ~~provisions of Subsection B of this section]~~ A worker is not
17 entitled to temporary total disability benefits as set forth in
18 Subsection B or C of this section if the worker is terminated
19 for post-injury misconduct connected with the employment;
20 provided that, if an employer terminates the worker for the
21 pretextual reasons of attempting to avoid payment of benefits
22 to the worker or as retaliation against the worker for seeking
23 benefits, the worker shall be entitled to temporary total
24 disability benefits and the employer shall be subject to
25 penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA

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1 1978.

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

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

7 "52-1-26. PERMANENT PARTIAL DISABILITY.--

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

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

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

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1 percent.

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

9 E. A worker is not entitled to modification if the
10 worker is terminated for post-injury misconduct connected with
11 the employment; provided that, if an employer terminates the
12 worker for the pretextual reasons of attempting to avoid
13 payment of benefits to the worker or as retaliation against the
14 worker for seeking benefits, the worker shall be entitled to
15 modification and the employer shall be subject to penalties as
16 set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

17 ~~[E-]~~ F. In considering a claim for permanent
18 partial disability, a workers' compensation judge shall not
19 receive or consider the testimony of a vocational
20 rehabilitation provider offered for the purpose of determining
21 the existence or extent of disability."