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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/7/16

**SPONSOR** Barela **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Workers' Comp Exemptions **SB** 283

**ANALYST** Klunt

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	Indeterminate But Will Reduce Revenues	Indeterminate But Will Reduce Revenues		Recurring

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 244

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Workers' Compensation Administration (WCA)

Administrative Office of the Courts (AOC)

### SUMMARY

SB 283 amends Section 52-1-6 NMSA 1978 of the Workers' Compensation Act to strike the exemption of employers of farm and ranch laborers and to add an exemption for employers who "paid or are obligated to pay cash wages for all services rendered" of less than \$8 thousand annually. This bill also amends the definition of "worker" and provides that "worker" shall not include:

- (1) a family relation of an employer;
- (2) a family relation of an executive employee;
- (3) a sole proprietor; and
- (4) an individual who exchanges occasional and reciprocal or similar services with an employer.

SB 283 also repeals the definition of farm and ranch laborer currently found at Section 52-1-6.1 NMSA 1978.

## FISCAL IMPLICATIONS

WCA reports this bill's definition of "worker" will likely reduce the number of employers and workers covered by the Act. Such a change will impact the WCA's budget, which is derived exclusively from assessment fees paid by employers and workers covered under New Mexico's workers' compensation laws. See NMSA 1978, § 52-5-19.

## SIGNIFICANT ISSUES

The bill appears reactive to a recent Court of Appeals decision, *Noe Rodriguez, et al., v. Brand West Dairy, et al.*, 2015 -NMCA- 097, which declared the exclusion of farm and ranch workers from Workers' Compensation Act unconstitutional. The case is currently pending on appeal before the New Mexico Supreme Court; a stay has not been issued, so the Court of Appeals decision is currently the law of New Mexico.

The bill does not make similar amendments to Section 52-3-2 of the Occupational Disease and Disablement Law. Both the Workers' Compensation Act and the Occupational Disease and Disablement provide benefits to injured workers of employers subject to New Mexico's workers' compensation laws. The WCA states the coverage requirements under both acts should be the same, especially to avoid disparate treatment between workers who suffer an occupational injury and workers who suffer from an occupational disease.

WCA is also concerned this bill language may be too broad and therefore create confusion for the agency to implement. For example, WCA reports Section 52-1-6(A)(2), is unclear as to what is meant by an employer who is "obligated to pay cash wages" and whether such conduct may violate state or federal employment laws, such as employment eligibility verification. Also, the agency is concerned this section is unclear whether \$8 thousand per calendar year is cumulative or per worker.

WCA also reports the bill may be unclear as to whether the amendment at (B)(2) is intended to apply to all industries. If so, this amendment would be a significant change in the law and exclude many family owned businesses, such as restaurants and construction contractors, that have previously been required to provide coverage for family members working for the business.

WCA raised the question as to definitions of the terms "occasional", "reciprocal", and "similar". The agency believes these definitions could be read to mean that sub-contractors on a construction site or trade labor be considered each other's employees when working for the other.

Finally, WCA reports concerns regarding subparagraph (B)(3) – i.e., does the "provided that" clause refer to the executive employee or the family member of the executive employee? Lastly, paragraph (B)(3) refers to "sole proprietor" in a context inconsistent with the definition of sole proprietor that appears at NMSA 1978, § 52-1-7(F)(2). By definition, a "sole proprietor" is not required to have coverage from themselves, unless they are engaged in activities required to be licensed under the Construction Industries Act.

## ADMINISTRATIVE IMPLICATIONS

WCA reports this bill may present enforcement challenges for the WCA as well as challenges for insurance underwriters. Enforcing the mandatory insurance provisions against employers who make cash payments of less than \$8 thousand and verifying who is a family member not required to be covered present unique challenges to enforce the mandatory insurance provisions of the Act

## RELATIONSHIP

SB 244 attempts to offer a rational basis for excluding farm and ranch workers from the Act. SB 283 deletes or repeals the current exclusion from the Act of farm and ranch workers as required by the holding of the N.M. Court of Appeals in *Rodriguez v. Brand West Dairy*, 2015-NMCA-097, cert. granted, 2015-NMCERT-\_\_\_\_, and cert. granted, 2015-NMCERT-\_\_\_\_\_.

## TECHNICAL ISSUES

The term “employee” is used on page 5 at lines 3, 8, and 13 where the term “worker” is more appropriate. Current law contains a statutory reference to the Construction Industries Licensing Act – [Chapter 60, Article 13 NMSA 1978] – which does not appear as a strike through on page 2 at line 3 in SB 283.

## OTHER SUBSTANTIVE ISSUES

The purpose of the Workers’ Compensation Act is to quickly and efficiently provide limited, but sufficient, indemnity and medical benefits to injured workers at a reasonable cost to employers. Otherwise, benefit recovery must be achieved through the unpredictable, slower and often more costly means of tort recovery. *Rodriguez*, 2015-NMAC-097, ¶¶16, 26. In *Rodriguez* at ¶17, the Court of Appeals concluded that:

Excluding farm and ranch laborers from workers’ compensation coverage denies them the benefits, including but not limited to the monetary benefits, that the Act was intended to provide. It also circumvents the policy and philosophy of the Act—to balance the interests and rights of the worker and the employer. *See Salazar*, [2007-NMSC-019](#), ¶ 10.

However, as contrasted with the farm and ranch workers exception, the AOC reports the exemptions of proposed SB 283 relate to small employers, related employers and workers, and occasional and reciprocal services. Not addressing the farm and ranch worker exception that was found to violate Equal Protection in *Rodriguez*, current Section 52-1-6(A) provides that the Act shall apply to employers of three or more workers (except the Act shall apply to “all employers engaged in activities required to be licensed under the provisions of the Construction Industries Licensing Act ... regardless of the number of employees”). Also, the provisions of the Act “shall not apply to employers of private domestic servants.” These current exemptions for employers of less than three workers and of private domestic servants have not as yet been successfully challenged, and seem to indicate a legislative intent to not force the Act on small or occasional employers, including small family companies. Tort liability remains the available remedy for injured workers in these situations. Also, such employers may opt into coverage by the Act under this section in order to obtain the exclusive remedies of the Act as opposed to tort liability. This option is also available to those employers exempted by SB 283.

**ALTERNATIVES**

WCA reports the Workers' Compensation Advisory Council has not reviewed or considered this legislation. The agency also suggests industry stakeholders such as the National Council on Compensation Insurance (NCCI), Office of the Superintendent of Insurance, New Mexico Mutual, and insurance agents be given an opportunity to weigh in on how the change will affect New Mexico's workers' compensation system and policy premiums.

WCA requests an interim legislative committee to discuss workers' compensation coverage requirements for all employers conducting business in New Mexico. Or in alternative to wait and see how the New Mexico Supreme Court rules on this issue.

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