

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 155

3 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

4
5
6
7
8
9
10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 52-1-25.1 NMSA 1978 (being Laws 1990
17 (2nd S.S.), Chapter 2, Section 10, as amended) is amended to
18 read:

19 "52-1-25.1. TEMPORARY TOTAL DISABILITY--RETURN TO WORK.--

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

.206433.3

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 employer offers work at the worker's~~
6 ~~pre-injury wage; or~~

7 (2) ~~the worker accepts employment with another~~
8 ~~employer at the worker's pre-injury wage] and the employer does
9 not make a reasonable work offer at the worker's pre-injury
10 wage, the worker is disabled and shall receive temporary total
11 disability compensation benefits equal to two-thirds of the
12 worker's pre-injury wage.~~

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

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

25 (1) the employer makes a reasonable work offer

1 at or above the worker's pre-injury wage, within medical
2 restrictions, if any, as stated by the health care provider
3 pursuant to Section 52-1-49 NMSA 1978, and the worker rejects
4 the offered employment;

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

7 (3) the worker is terminated for misconduct
8 connected with the employment that is unrelated to the
9 workplace injury; if the court finds that an employer
10 terminated the worker for pretextual reasons as a way of
11 attempting to avoid payment of benefits to the worker or as
12 retaliation against the worker for seeking benefits, the worker
13 shall be entitled to temporary total disability benefits and
14 the employer shall be subject to penalties as set forth in
15 Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

16 E. Upon a finding that an employer has terminated a
17 worker for pretextual reasons, the court at its discretion may
18 also impose an additional fine, not to exceed ten thousand
19 dollars (\$10,000), on the employer.

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

23 G. If there is a dispute between the parties
24 regarding the reasonableness of the employer's work offer or
25 the worker's refusal to return to work, the court shall decide

.206433.3

1 if the work offer or the worker's refusal to return to work is
2 reasonable based on all of the circumstances."

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

5 "52-1-26. PERMANENT PARTIAL DISABILITY.--

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

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

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

25 D. [~~If~~] On or after the date of maximum medical

1 improvement, ~~[an injured worker returns to work at a wage equal~~
 2 ~~to or greater than the worker's pre-injury wage]~~ the worker's
 3 permanent partial disability rating shall be equal to ~~[his]~~ the
 4 worker's impairment and shall not be subject to the
 5 modifications calculated pursuant to Sections 52-1-26.1 through
 6 52-1-26.4 NMSA 1978 if:

7 (1) the worker returns to work at a wage at or
 8 above the worker's pre-injury wage;

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

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

16 (4) the worker is terminated for misconduct
 17 connected with the employment that is unrelated to the
 18 workplace accident; if the court finds that an employer
 19 terminates the worker for pretextual reasons to avoid payment
 20 of benefits to the worker or as retaliation against the worker
 21 for seeking benefits, the worker shall be entitled to modifier
 22 benefits and the employer shall be subject to penalties as set
 23 forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

24 E. Upon a finding that an employer has terminated a
 25 worker for pretextual reasons, the court at its discretion may

.206433.3

1 also impose an additional fine, not to exceed ten thousand
2 dollars (\$10,000), on the employer.

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

8 G. If there is a dispute between the parties
9 regarding the reasonableness of the employer's work offer or
10 the worker's refusal to return to work, the court shall decide
11 if the work offer or the worker's refusal to return to work is
12 reasonable based on all of the circumstances."

underscoring material = new
[bracketed material] = delete