HOUSE BILL 268

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO WORKERS' COMPENSATION; CREATING A PRESUMPTION THAT CORONAVIRUS DISEASE 2019 IS AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT FOR ESSENTIAL EMPLOYEES; PERMITTING EMPLOYERS TO REBUT THAT PRESUMPTION; PROHIBITING WORKERS' COMPENSATION INSURERS FROM USING CORONAVIRUS DISEASE 2019 CLAIMS IN DEVELOPING RATING PLANS; DECLARING AN EMERGENCY.

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

SECTION 1. Section 52-1-19 NMSA 1978 (being Laws 1975,

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Chapter 284, Section 6, as amended) is amended to read:

"52-1-19. INJURY BY ACCIDENT--COURSE OF EMPLOYMENT--CORONAVIRUS DISEASE 2019--PRESUMPTION.--

A. As used in the Workers' Compensation Act, unless the context otherwise requires, "injury by accident arising out of and in the course of employment" shall:

(1) include:

(a) accidental injuries to workers and death resulting from accidental injury as a result of their employment and while at work in any place where their employer's business requires their presence; [~~but shall~~] and

(b) the contraction of coronavirus disease 2019 caused by the novel coronavirus by any essential employee from the effective date of this 2021 act until Hfll→~~January 31, 2023~~←Hfll Hfll→**the end of the state of public health emergency related to the coronavirus disease 2019, as declared by the governor, if the presumption in Subsection B of this section applies and is not rebutted pursuant to Subsection C of this section**←Hfll Hfll→~~HLVMC→, if the presumption in Subsection B of this section applies and is not rebutted pursuant to Subsection C of this section←HLVMC~~←Hfll ; and

(2) not include injuries to any worker occurring while on [~~his~~] the worker's way to assume the duties of [~~his~~] the worker's employment or after leaving such duties, the proximate cause of which is not the employer's negligence.

B. If an essential employee is diagnosed with coronavirus disease 2019 caused by the novel coronavirus, and the essential employee has established that the employer has not strictly complied with the HLVMC→~~then existent~~←HLVMC public health orders related to the coronavirus disease 2019 HLVMC→in effect at any time during the fourteen days prior to the diagnosis←HLVMC , the condition is presumed to be:

(1) an accidental injury arising out of and in the course of employment;

(2) reasonably incident to and proximately caused by employment; and

(3) a disability that is a natural and direct result of the accident.

C. The presumptions created in Subsection B of this section may be rebutted by a preponderance of evidence HLVMC→~~in a court of competent jurisdiction~~←HLVMC establishing that the employee engaged in conduct or activities outside of employment that substantially violated the HLVMC→~~then existent~~←HLVMC public health orders related to the coronavirus disease 2019 HLVMC→in effect at any time during the fourteen days prior to the diagnosis←HLVMC .

Hfl1→~~HLVMC→D. As used in this section, "essential employee" mean any public safety employee or school employee or an employee declared to be an essential employee pursuant to a public health order of the governor or the secretary of health;~~

~~provided that the employee was required to work at the physical location of employment at any time, up to twenty days prior to the diagnosis of coronavirus disease 2019."~~←HLVMC←Hfl1

Hfl1→~~HLVMC→D. As used in this section, "essential employee" means any public safety employee, any school employee, any employee of any business declared to be an essential business pursuant to a public health order of the governor or the secretary of health, or any employee of a business that has been permitted to operate with limitations pursuant to a public health order of the governor or the secretary of health; provided that the employee was required to work at the physical location of employment at any time, up to twenty days prior to the diagnosis of coronavirus disease 2019; and provided further that the employee does not work for a business whose testing and tracing plans have been approved by the department of health."←HLVMC~~←Hfl1

Hfl1→~~Hfl1→D. As used in this section, "essential employee" mean any public safety employee or school employee or an employee declared to be an essential employee pursuant to a public health order of the governor or the secretary of health; provided that the employee was required to work at the physical location of employment at any time, up to twenty days prior to the diagnosis of coronavirus disease 2019."←Hfl1~~←Hfl1

Hfl1→D. As used in this section, "essential

employee" means first responders, medical personnel, teachers, construction trade workers, other employees who work at care centers for the coronavirus disease 2019 and others whose work brings them into repeated and direct personal contact with those diagnosed with the coronavirus disease 2019; provided that the employee was required to work at the physical location of employment at any time up to fourteen days prior to the diagnosis of coronavirus disease 2019."←Hfll

SECTION 2. Section 59A-17-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 304, as amended) is amended to read:

"59A-17-8. MAKING OF RATES--WORKERS' COMPENSATION--RATE CALCULATIONS--RATE CLASSIFICATIONS.--

A. A workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the superintendent by an advisory organization designated by the superintendent.

B. A workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by the advisory organization designated by the superintendent.

C. Workers' compensation premium rates shall be equalized and calculated on a basis that does not discriminate against or penalize employers who pay higher wages than other employers to workers in the same job classification. The legislature finds that calculating workers' compensation

premium rates strictly on the basis of an employer's wages paid discriminates against and penalizes higher-paying employers. The legislature accordingly directs that the superintendent shall:

(1) investigate alternatives to the current method of computing workers' compensation premiums, including but not limited to:

(a) split classification;

(b) payroll cap;

(c) hours worked; and

(d) premium credits;

(2) immediately conduct hearings on the issue, including consideration of other alternatives; and

(3) adopt regulations, to become effective no later than April 1, 1991, to equalize the workers' compensation premium rates employers must pay for workers who perform the same job. Nothing in this subsection shall be construed to prohibit the use of experience rating or scheduled credits.

D. A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. Such subclassifications and their filing shall be subject to all applicable provisions of the Insurance Rate Regulation Law. Data produced from such subclassifications shall be reported in accordance with the statistical plans, uniform classification system and experience

rating system in use by the advisory organization designated by the superintendent.

E. Classification assignments may be changed within sixty days of the effective date or renewal date of the policy; provided that the employer is given reasonable prior notice of the proposed change in order to object; and provided further that the change is based upon an appropriate audit or investigation. The same provisions apply to initial classification assignments for new operations added by the employer so that they may be changed within sixty days of the date the classification assignments are initially established. No subsequent changes shall be made unless the insurer proves, after conducting an audit or investigation, that:

(1) there has been a substantial change in the nature of the work performed; or

(2) the initial assignment was in error due to withheld or inaccurate material information provided by the employer.

F. A workers' compensation insurer may develop rating plans that identify loss experience as a factor to be used. The rating plans and their filing shall be subject to all applicable provisions of the Insurance Rate Regulation Law.

G. The superintendent shall disapprove subclassifications, rating plans or other variations from supplementary rate information filed by a workers' compensation

insurer if the insurer:

(1) fails to demonstrate that the data produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization designated by the superintendent; or

(2) uses any data related to claims arising from coronavirus disease 2019 for which an injury by accident arising out of and in the course of employment is presumed pursuant to Section 52-1-19 NMSA 1978 in developing a rating plan."

SECTION 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.