

HOUSE BILL 268

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

INTRODUCED BY

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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,  
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:

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1                   (1) include:

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

6                    (b) the contraction of coronavirus  
7 disease 2019 caused by the novel coronavirus by any essential  
8 employee from the effective date of this 2021 act until January  
9 31, 2023; and

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

14                    B. If an essential employee is diagnosed with  
15 coronavirus disease 2019 caused by the novel coronavirus,  
16 and the essential employee has established that the employer  
17 has not strictly complied with the then existent public health  
18 orders related to the coronavirus disease 2019, the condition  
19 is presumed to be:

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

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

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

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1           C. The presumptions created in Subsection B of this  
2 section may be rebutted by a preponderance of evidence in a  
3 court of competent jurisdiction establishing that the employee  
4 engaged in conduct or activities outside of employment that  
5 substantially violated the then existent public health orders  
6 related to the coronavirus disease 2019.

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

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

16           "59A-17-8. MAKING OF RATES--WORKERS' COMPENSATION--RATE  
17 CALCULATIONS--RATE CLASSIFICATIONS.--

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

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

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1           C. Workers' compensation premium rates shall be  
2 equalized and calculated on a basis that does not discriminate  
3 against or penalize employers who pay higher wages than other  
4 employers to workers in the same job classification. The  
5 legislature finds that calculating workers' compensation  
6 premium rates strictly on the basis of an employer's wages paid  
7 discriminates against and penalizes higher-paying employers.  
8 The legislature accordingly directs that the superintendent  
9 shall:

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

- 13                               (a) split classification;
- 14                               (b) payroll cap;
- 15                               (c) hours worked; and
- 16                               (d) premium credits;

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

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

24           D. A workers' compensation insurer may develop  
25 subclassifications of the uniform classification system upon

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1 which rates may be made. Such subclassifications and their  
2 filing shall be subject to all applicable provisions of the  
3 Insurance Rate Regulation Law. Data produced from such  
4 subclassifications shall be reported in accordance with the  
5 statistical plans, uniform classification system and experience  
6 rating system in use by the advisory organization designated by  
7 the superintendent.

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

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

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

24 F. A workers' compensation insurer may develop  
25 rating plans that identify loss experience as a factor to be

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1 used. The rating plans and their filing shall be subject to  
2 all applicable provisions of the Insurance Rate Regulation Law.

3 G. The superintendent shall disapprove  
4 subclassifications, rating plans or other variations from  
5 supplementary rate information filed by a workers' compensation  
6 insurer if the insurer:

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

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

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