

AN ACT
RELATING TO INSURANCE; SEPARATING THE EXPERIENCE
MODIFICATION FACTOR FOR PARTICIPANTS OF THE NEW MEXICO WORKS
ACT; CLARIFYING THE EMPLOYMENT STATUS OF PARTICIPANTS OF THE
NEW MEXICO WORKS ACT.

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

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"EXPERIENCE MODIFICATION FACTOR--WORKERS' COMPENSATION CLAIMS--NEW MEXICO WORKS ACT.--

A. Workers' compensation claims by participants as defined in the New Mexico Works Act shall be separately recorded and maintained in the calculation of the experience modification factor used to calculate premiums for the participating employer so that the experience modification factor attributable to claims by participants can be separated from the remainder of the employer's experience modification factor.

B. The separately calculated experience modification factor for the first year of employment of each participant shall not be considered as part of the experience modification factor of any employer. The superintendent of insurance shall promulgate rules to implement this section.

C. For the purpose of this section, "participants" means participants as defined in the New Mexico Works Act."

Section 2. A new section of the New Mexico Works Act is enacted to read:

"WORK ACTIVITIES--WORKERS' COMPENSATION COVERAGE.--

A. For the purposes of the Workers' Compensation Act:

(1) cash assistance and services paid to participants engaged in any work activity described in Section 27-2B-5 NMSA 1978 shall not be considered wages and shall not be deemed to create an employer-employee or co-employer-employee relationship between the participant and the state; and

(2) payment of a wage subsidy to an employer of a participant shall not be deemed to be payment of wages by the state and shall not be deemed to create an employer-employee or co-employer-employee relationship between the participant and the state.

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B. Workers' compensation claims by participants shall be separately recorded and maintained in the calculation of the experience modification factor used to calculate premiums for the participating employer so that the experience modification factor attributable to claims by participants can be separated from the remainder of the employer's experience modification factor.

C. The separately calculated experience modification factor for the first year of employment of each participant shall not be considered as part of the experience modification factor of any employer. The superintendent of insurance shall promulgate rules to implement this section.

D. The department shall ensure that participants undergo safety training prior to employment.

E. Participants in an unpaid work activity

described in Section 27-2B-5 NMSA 1978 shall be considered
trainees and shall not be eligible for workers' compensation
benefits." _____