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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE
WORKERS' COMPENSATION ACT TO CLARIFY WHEN A WORKER IS ENTITLED
TO CERTAIN BENEFITS.

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

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

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

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

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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.

9 C. If, prior to the date of maximum medical
10 improvement, an injured worker's health care provider releases
11 the worker to return to work and the employer offers work at
12 less than the worker's pre-injury wage, the worker is disabled
13 and shall receive temporary total disability compensation
14 benefits equal to two-thirds of the difference between the
15 worker's pre-injury wage and the worker's post-injury wage.

16 D. If the worker returns to work pursuant to the
17 provisions of Subsection B of this section, the employer shall
18 continue to provide reasonable and necessary medical care
19 pursuant to Section 52-1-49 NMSA 1978.

20 E. If the worker is responsible for the separation
21 from employment and that separation is unrelated to the on-the-
22 job injury, the worker shall not receive temporary total
23 disability."

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

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

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

9 B. As used in the Workers' Compensation Act,
10 "partial disability" means a condition whereby a worker, by
11 reason of injury arising out of and in the course of
12 employment, suffers a permanent impairment.

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

21 D. If, on or after the date of maximum medical
22 improvement, an injured worker returns to work at a wage equal
23 to or greater than the worker's pre-injury wage, the worker's
24 permanent partial disability rating shall be equal to [~~his~~] the
25 worker's impairment and shall not be subject to the

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underscoring material = new
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1 modifications calculated pursuant to Sections 52-1-26.1 through
2 52-1-26.4 NMSA 1978.

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

8 F. If the worker is responsible for the separation
9 from employment and that separation is unrelated to the on-the-
10 job injury, the permanent partial disability rating shall be
11 equal to the impairment rating."

12 SECTION 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2017.