



STATE OF NEW MEXICO

# Workers' Compensation Administration

## System Challenges

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# Workers' Comp Administration Mission

- To assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers. *See* NMSA 1978, § 52-5-1.

## Advisory Council Mission

- The mission of the Advisory Council is: to monitor the performance of the workers' compensation and occupational disease disablement system; and to make recommendations to the Governor, Legislature, in order to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers. *See* NMSA 1978, § 52-1-1.2.

# System Challenges

- Lack of clarity in the law
  - ✓ The system depends on clarity in the law so that claims can be paid predictably and consistently . . . and without WCA involvement and adjudication
  - ✓ Coverage clean-up in the statute: defining “employee,” “independent contractor,” “volunteer,” “family member;” counting executive employees, but not “partners;” consistency in both sections (WC Act & Occupational Disease Disablement law)
- Incentives for return-to-work eroded
  - 1990 legislative reforms sought to encourage return to work and discourage reliance on compensation benefits

# 2017 Legislative Opportunities

## Return to Work

- Clarify standards and outcomes when an employer offers an injured employee work
- Workers' outcomes are much better when they can return to work with the at-injury employer (34 days v. 478 days).
- Recent appellate cases discourage return to work by requiring employers to pay benefits even when they offer the injured employee a return to work offer, but the employee declines.
- Encourage employers to make return to work offers while clarifying employers' rights when an injured worker, after rehire, engages in misconduct or is terminated for cause unrelated to the work injury

### References

*An Evaluation of NM Workers' Compensation Permanent Partial Disability and Return to Work*, RAND Institute for Civil Justice, 2001

*Cordova v. KSL Union*, 2012-NMCA-083

*Hawkins v. McDonald's*, 2014-NMCA-048

# Work Compensation and Economic Development

The State Economic Competitiveness Index shows that work comp is in the top 15 of criteria businesses consider when deciding to do business in a state. NM ranks 31 in average work comp costs. It also shows that NM is 34<sup>th</sup> in Economic Outlook Rankings. NM ranks 45 in terms of litigation and impartiality of the court system. There are a number of court decisions regarding workers' compensation that further the perception that NM is not business friendly. Let's balance our work comp laws and give businesses one more reason to bring jobs to New Mexico.

(<https://www.alec.org/app/uploads/2016/04/2016-ALEC-Rich-States-Poor-States-Rankings.pdf>)

# Work Comp Benefits and Employee Misconduct

*(Hawkins v McDonald's)*

## **Encouraging Bad Behavior: Misconduct and Work Comp benefits**

- Workers' compensation is based on a system that rewards workers/employers for successful return-to-work practices and can penalize either party when return to work options fail. It is not only the employer's responsibility to offer return to work whenever possible, it is the worker's responsibility to accept and remain at work whenever possible.
- Recent court decisions have inappropriately removed the workers' responsibility to work by mandating wage loss benefits to a worker that had been back to work, but chose to engage in misconduct and was terminated.
- Balanced (not one sided) language needs to be added to the current statute to hold both the worker and the employer accountable for their actions.

# Worker's Comp and Return to Work Incentives

*(Cordova v KSL-Union)*

- In workers' compensation, recovery and return to work are the foundation of what makes the system work. **Section 52-1-26**. Permanent partial disability, states in part A., "As a guide to the interpretation and application of this section, the policy and intent of this legislature is declared to be that every person who suffers a compensable injury with resulting permanent partial disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.
- There are times, however, when a worker is so badly injured that they cannot return to work. There are expanded benefits built into the statute for those badly injured workers. However, language in that section is such that loopholes exist to expand benefits to workers that are able to go back to work. When a law lacks specificity in a given area, it is left to the courts to decide how to apply the sometimes vague language in statute. When court decisions are made that are contrary to the spirit of the law, it is up to the legislature to correct any ambiguity in the statute to preserve the spirit of the Act.

# Worker's Compensation and Return to Work Incentives

- In *Cordova v KSL-Union* (2012), the NM Court of Appeals expanded the group of injured workers who can receive Permanent Partial Disability modifiers, a benefit that was designed only for those with seriously injured workers who could not return to work.
- In this *Cordova* case, the worker was able to return to work, but instead chose to retire, and yet kept workers comp disability benefits.
- This *Cordova* case may now be used as a basis for other cases to expand benefits where a worker is able to go back to work but refused a job offer.
- Statutory language needs to close this loophole and preserve these expanded benefits for the seriously injured that are unable to return to work, as was intended.



# Recovery from an At-Fault Third-Party /Subrogation / Right of Reimbursement

## **Brief Explanation of the Issue**

Often times when a worker is injured it is neither the worker nor the employers fault, nor any co-worker. In these situations the worker was injured due to the negligence of some other at-fault party.

## **What the Bill Will Accomplish?**

The bill should address how the injured employee, the injured employee's employer and the insurer providing workers' compensation benefits can pursue an action against that outside, at-fault, third-party, to be properly compensated.

## **Why Is This Issue Coming Up Now?**

Under current state work comp laws, both the injured employee and the employer/insurer could pursue the at-fault party for full recovery. What changed? - Over time the employer/insurer's recovery options have been limited and/or restricted. Employers experiencing financial losses and higher insurance rates, though neither the employer nor an employee was at fault.