

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 1003

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
CHANGING PROVISIONS OF THE WORKERS' COMPENSATION ACT RELATING  
TO INDEPENDENT MEDICAL EXAMINATIONS AND TO TEMPORARY DISABILITY  
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) 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 ~~the~~ a  
worker, by reason of accidental injury arising out of and in  
the course of his employment, to perform his duties prior to  
the date of his maximum medical improvement.

B. If, prior to the date of maximum medical

1 improvement, an injured worker's health care provider releases  
2 the worker to return to work and ~~the~~ any employer offers work  
3 at the worker's pre-injury wage, the worker is not entitled to  
4 temporary total disability benefits.

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

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

17 Section 2. Section 52-1-51 NMSA 1978 (being Laws 1929,  
18 Chapter 113, Section 19, as amended) is amended to read:

19 "52-1-51. PHYSICAL EXAMINATIONS OF WORKER--INDEPENDENT  
20 MEDICAL EXAMINATION--UNSANITARY OR INJURIOUS PRACTICES BY  
21 WORKER--TESTIMONY OF HEALTH CARE PROVIDERS.--

22 A. ~~[In the event of a dispute concerning any~~  
23 ~~medical issue, if the parties cannot agree upon the use of a~~  
24 ~~specific independent medical examiner, either party may~~  
25 ~~petition a workers' compensation judge for permission to have~~

1 ~~the worker undergo an independent medical examination.]~~ If a  
 2 party to a claim disputes the reasonableness or necessity of  
 3 treatment, or causation, of the injury, that party may petition  
 4 a workers' compensation judge for permission to have the worker  
 5 undergo an independent medical examination. The independent  
 6 medical examination shall be performed immediately, pursuant to  
 7 procedures adopted by the director, by a health care provider  
 8 other than the designated health care provider, unless the  
 9 employer and the worker otherwise agree.

10 B. In deciding who may conduct the independent  
 11 medical examination, the workers' compensation judge shall not  
 12 designate the health care provider initially chosen by the  
 13 petitioner. The workers' compensation judge shall designate a  
 14 health care provider on the approved list of persons authorized  
 15 by the committee appointed by the advisory council on workers'  
 16 compensation to create that list. The decision of the workers'  
 17 compensation judge shall be final. The employer shall pay for  
 18 any independent medical examination.

19 C. Only a health care provider who has treated the  
 20 worker pursuant to Section 52-1-49 NMSA 1978 or the health care  
 21 provider providing the independent medical examination pursuant  
 22 to this section may offer testimony at any workers'  
 23 compensation hearing concerning the particular injury in  
 24 question.

25 D. If, pursuant to Subsection C of Section 52-1-49

1 NMSA 1978, the injured worker selects a new health care  
2 provider, the employer shall be entitled to periodic  
3 examinations of the worker by the health care provider he  
4 previously selected. Examinations may not be required more  
5 frequently than at six-month intervals; except that upon  
6 application to the workers' compensation judge having  
7 jurisdiction of the claim and after [~~reasonable~~] reasonable  
8 cause therefor, examinations within six-month intervals may be  
9 ordered. In considering such applications, the workers'  
10 compensation judge [~~should~~] shall exercise care to prevent  
11 harassment of the claimant.

12 E. If the employer requests an independent medical  
13 examination or an examination pursuant to Subsection D of this  
14 section, the worker shall travel to the place at which the  
15 examination shall be conducted. Within thirty days after the  
16 examination, the worker shall be compensated by the party  
17 requesting the examination for all necessary and reasonable  
18 expenses incidental to submitting to the examination, including  
19 the cost of travel, meals, lodging, loss of pay or other like  
20 direct expense, but the amount to be compensated for meals and  
21 lodging shall not exceed that allowed for nonsalaried public  
22 officers under the Per Diem and Mileage Act.

23 F. No attorney shall be present at any examination  
24 authorized under this section.

25 G. Both the employer and the worker shall be given

1 a copy of the report of the examination of the worker made by  
2 the independent health care provider pursuant to this section.

3 H. If a worker fails or refuses to submit to  
4 examination in accordance with this section, he shall forfeit  
5 all workers' compensation benefits that would accrue or become  
6 due to him except for [~~such~~] that failure or refusal to submit  
7 to examination during the period that he persists in such  
8 failure and refusal unless he is by reason of disability unable  
9 to appear for examination.

10 I. If any worker persists in any unsanitary or  
11 injurious practice that tends to imperil, retard or impair his  
12 recovery or increase his disability or refuses to submit to  
13 such medical or surgical treatment as is reasonably essential  
14 to promote his recovery, the workers' compensation judge may in  
15 his discretion reduce or suspend the workers' compensation  
16 benefits. "

underscoring material = new  
[bracketed material] = delete