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SENATE BILL 385

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Clemente Sanchez

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING A SECTION OF THE  
WORKERS' COMPENSATION ACT TO PROVIDE FOR FAIR PAYMENT OF  
PERMANENT PARTIAL DISABILITY MODIFIERS.

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

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

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

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.

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1           B. As used in the Workers' Compensation Act,  
2 "partial disability" means a condition whereby a worker, by  
3 reason of injury arising out of and in the course of  
4 employment, suffers a permanent impairment.

5           C. Permanent partial disability shall be determined  
6 by calculating the worker's impairment as modified by ~~[his]~~ the  
7 worker's age, education and physical capacity, pursuant to  
8 Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that,  
9 regardless of the actual calculation of impairment as modified  
10 by the worker's age, education and physical capacity, the  
11 percentage of disability awarded shall not exceed ninety-nine  
12 percent.

13           D. If, on or after the date of maximum medical  
14 improvement, an injured worker returns to work at a wage equal  
15 to or greater than the worker's pre-injury wage, the worker's  
16 permanent partial disability rating shall be equal to ~~[his]~~ the  
17 worker's impairment and shall not be subject to the  
18 modifications calculated pursuant to Sections 52-1-26.1 through  
19 52-1-26.4 NMSA 1978. If, on or after the date of maximum  
20 medical improvement, an injured worker returns to work at a  
21 wage less than the worker's pre-injury wage, the sum of the  
22 worker's weekly disability benefit modifiers as calculated  
23 pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978 plus  
24 the worker's post-maximum medical improvement weekly wages  
25 shall not exceed the worker's pre-injury average weekly wage as

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1 defined in Section 52-1-20 NMSA 1978.

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

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