

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING THE WORKERS' COMPENSATION ACT TO INCLUDE LEGISLATORS WITHIN THE DEFINITION OF "PUBLIC EMPLOYEE".

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

Section 1. Section 52-1-3.1 NMSA 1978 (being Laws 1979, Chapter 199, Section 2, as amended) is amended to read:

"52-1-3.1. PUBLIC EMPLOYEE.--As used in the Workers' Compensation Act, unless otherwise provided, "public employee" means any person receiving a salary from, and acting in the service of, the state or any county, municipality, school district, drainage, irrigation or conservancy district, public institution or administrative board. The term "public employee" includes a salaried public officer or legislator but does not include an independent contractor; provided that the average weekly wage, determined pursuant to Section 52-1-20 NMSA 1978, for a legislator shall be zero."

Section 2. Section 52-1-16 NMSA 1978 (being Laws 1965, Chapter 295, Section 9, as amended) is amended to read:

"52-1-16. WORKER--REAL ESTATE SALESPERSON EXCEPTED.--

A. As used in the Workers' Compensation Act, unless the context otherwise requires, "worker" means any person who has entered into the employment of or works under

contract of service or apprenticeship with an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business. The term "worker" shall include "employee" and shall include the singular and plural of both sexes. "Worker" includes public employee, as defined in the Workers' Compensation Act, including salaried public officers and legislators.

B. For the purposes of the Workers' Compensation Act, an individual who performs services as a qualified real estate salesperson shall not be treated as an employee and the person for whom the services are performed shall not be treated as an employer.

C. For the purpose of Subsection B of this section, a "qualified real estate salesperson" means an individual who:

(1) is a licensed real estate salesperson, associate broker or broker under contract with a real estate firm;

(2) receives substantially all of his remuneration, whether or not paid in cash, for the services performed as a real estate salesperson, associate broker or broker under contract with a real estate firm in direct relation to sales or other output, including the performance of services, rather than to the number of hours worked; and

(3) performs services pursuant to a

written contract between himself and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to such services."

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