

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 250

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE WORKERS'
COMPENSATION ACT TO REESTABLISH RETURN TO WORK AND CLARIFY
BENEFIT ENTITLEMENT.

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.

.200866.2

underscoring material = new
[bracketed material] = delete

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] and the employer does
9 not offer work at the worker's pre-injury wage, the worker is
10 disabled and shall receive temporary total disability
11 compensation benefits equal to two-thirds of the worker's
12 pre-injury wage.~~

13 C. If, prior to the date of maximum medical
14 improvement, an injured worker's health care provider releases
15 the worker to return to work and the [~~employer offers] worker~~
16 returns to work at less than the worker's pre-injury wage, the
17 worker is disabled and shall receive temporary total disability
18 compensation benefits equal to two-thirds of the difference
19 between the worker's pre-injury wage and the worker's
20 post-injury wage.

21 D. [~~If the worker returns to work pursuant to the~~
22 ~~provisions of Subsection B of this section] A worker is not
23 entitled to temporary total disability benefits as set forth in
24 Subsection B or C of this section if:~~

25 (1) the employer makes a bona fide work offer,

1 that is reasonable to the employer and the worker, at or above
 2 the worker's pre-injury wage within medical restrictions, if
 3 any, as stated by the health care provider pursuant to Section
 4 52-1-49 NMSA 1978, and the worker rejects the offered
 5 employment;

6 (2) the worker accepts employment with another
 7 employer at or above the worker's pre-injury wage; or

8 (3) the worker is terminated for misconduct
 9 connected with the employment; provided that if an employer
 10 terminates the worker for the pretextual reasons of attempting
 11 to avoid payment of benefits to the worker or as retaliation
 12 against the worker for seeking benefits, the worker shall be
 13 entitled to temporary total disability benefits and the
 14 employer shall be subject to penalties as set forth in Sections
 15 52-1-28.1 and 52-1-28.2 NMSA 1978.

16 E. Notwithstanding the provisions of this section,
 17 the employer shall continue to provide reasonable and necessary
 18 medical care pursuant to Section 52-1-49 NMSA 1978."

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

21 "52-1-26. PERMANENT PARTIAL DISABILITY.--

22 A. As a guide to the interpretation and application
 23 of this section, the policy and intent of this legislature is
 24 declared to be that every person who suffers a compensable
 25 injury with resulting permanent partial disability should be

.200866.2

1 provided with the opportunity to return to gainful employment
2 as soon as possible with minimal dependence on compensation
3 awards.

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

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

16 D. ~~[If, on or after the date of maximum medical~~
17 ~~improvement, an injured worker returns to work at a wage equal~~
18 ~~to or greater than the worker's pre-injury wage]~~ On or after
19 the date of maximum medical improvement, the worker's permanent
20 partial disability rating shall be equal to ~~[his]~~ the worker's
21 impairment and shall not be subject to the modifications
22 calculated pursuant to Sections 52-1-26.1 through 52-1-26.4
23 NMSA 1978, if:

24 (1) the worker returns to work at a wage at or
25 above the worker's pre-injury wage;

1 (2) the worker accepts employment with another
2 employer at or above the worker's pre-injury wage;

3 (3) the employer makes a bona fide work offer,
4 that is reasonable to the employer and the worker, at or above
5 the worker's pre-injury wage within medical restrictions, if
6 any, as stated by the health care provider pursuant to Section
7 52-1-49 NMSA 1978, and the worker rejects the offered
8 employment; or

9 (4) the worker is terminated for misconduct
10 connected with the employment; provided that if an employer
11 terminates the worker for the pretextual reasons of attempting
12 to avoid payment of benefits to the worker or as retaliation
13 against the worker for seeking benefits, the worker shall be
14 entitled to modifier benefits and the employer shall be subject
15 to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2
16 NMSA 1978.

17 E. In considering a claim for permanent partial
18 disability, a workers' compensation judge shall not receive or
19 consider the testimony of a vocational rehabilitation provider
20 offered for the purpose of determining the existence or extent
21 of disability."