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**HOUSE BILL 465**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Lorenzo A. Larranaga**

**AN ACT**

**RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE  
WORKERS' COMPENSATION ADMINISTRATION ACT AND WORKERS'  
COMPENSATION ACT TO PROVIDE SUPERIOR EMPLOYER LIABILITY AND  
STRENGTHEN EXCLUSIVE REMEDY PROVISIONS.**

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

**Section 1. Section 52-1-10 NMSA 1978 (being Laws 1929,  
Chapter 113, Section 7, as amended) is amended to read:**

**"52-1-10. INCREASE OR REDUCTION IN COMPENSATION BASED ON  
FAILURE OF EMPLOYER TO PROVIDE OR FAILURE OF EMPLOYEE TO USE  
SAFETY DEVICES. --**

**A. In case an injury to, or death of, a worker  
results from his failure to observe statutory regulations  
appertaining to the safe conduct of his employment or from his  
failure to use a safety device provided by his employer, then**

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1 the compensation otherwise payable [~~under~~] pursuant to the  
2 Workers' Compensation Act shall be reduced ten percent.

3 B. In case an injury to, or death of, a worker  
4 results from the failure of an employer to provide safety  
5 devices required by law or, in any industry in which safety  
6 devices are not prescribed by statute, if an injury to, or  
7 death of, a worker results from the negligence of the employer  
8 in failing to supply reasonable safety devices in general use  
9 for the use or protection of the worker, then the compensation  
10 otherwise payable [~~under~~] pursuant to the Workers'  
11 Compensation Act shall be increased ten percent.

12 C. In case the death of a worker results from the  
13 failure of an employer to provide safety devices required by  
14 law or, in any industry in which safety devices are not  
15 prescribed by statute, if the death of a worker results from  
16 the negligence of the employer in failing to supply reasonable  
17 safety devices in general use for the use or protection of the  
18 worker and the deceased worker leaves no eligible dependents  
19 [~~under~~] pursuant to the Workers' Compensation Act, in addition  
20 to the benefits provided for in Subsection A of Section  
21 52-1-46 NMSA 1978, compensation in the amount of five thousand  
22 dollars (\$5,000) shall be paid to the surviving father and  
23 mother of the deceased or, if either of them [~~be~~] is deceased,  
24 to the survivor of them. The surviving father and mother, or  
25 either of them, may file a claim for the five thousand dollars

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1 (\$5,000) compensation, provided the father or mother has given  
2 notice in the manner and within the time required by Section  
3 52-1-29 NMSA 1978 and the claim is filed within one year from  
4 the date of the worker's death. If there ~~[be]~~ is no surviving  
5 father or mother, then the five thousand dollars (\$5,000)  
6 compensation provided for in this subsection shall not be  
7 payable.

8 D. In case an injury to, or death of, a worker  
9 results from a superior employer's failure to maintain a safe  
10 workplace or its failure to supervise or other negligent act,  
11 the compensation otherwise payable pursuant to the Workers'  
12 Compensation Act shall be increased ten percent. The increase  
13 shall be payable by that superior employer. As used in this  
14 section, "superior employer" means an employer that holds a  
15 contract to perform work and subcontracts all or part of that  
16 work to another employer and that may be the person,  
17 organization or entity that owns the project or the property  
18 where the injury occurs and is responsible for paying for the  
19 work performed under contract.

20 ~~[D.]~~ E. Any increased liability resulting from  
21 negligence on the part of the employer or superior employer  
22 shall be recoverable from the employer or superior employer  
23 only and not from the insurer, guarantor or surety of the  
24 employer or superior employer under the Workers' Compensation  
25 Act, except that this provision shall not be construed to

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1 prohibit an employer or superior employer from insuring  
2 against such increased liability, provided a superior  
3 employer may not require an employer who is performing work  
4 for the superior employer to hold the superior employer  
5 harmless for the additional compensation provided in  
6 Subsection D of this section.

7 [E-] F. No employee shall file a claim for  
8 increased compensation under the Workers' Compensation Act on  
9 the basis of an injury suffered because of the lack of a  
10 safety device nor shall a dependent of a deceased employee or  
11 the father or mother as provided in Subsection C of this  
12 section file a claim on the basis of the death of a worker  
13 suffered because of the lack of a safety device, unless the  
14 claim identifies the specific safety device [~~which~~] that it is  
15 claimed was not furnished by the employer. The employer is  
16 under a like duty to allege the specific safety device [~~which~~]  
17 that it is claimed an employee failed to use before the  
18 employer may claim a reduction of compensation as [~~herein~~]  
19 provided in Subsection A of this section. "

20 Section 2. Section 52-1-22 NMSA 1978 (being Laws 1965,  
21 Chapter 295, Section 15, as amended) is amended to read:

22 "52-1-22. WORK NOT CASUAL EMPLOYMENT. --

23 A. As used in the Workers' Compensation Act,  
24 unless the context otherwise requires, where any employer  
25 procures any work to be done wholly or in part for him by a

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1 contractor other than an independent contractor and the work  
2 so procured to be done is a part or process in the trade or  
3 business or undertaking of [~~such~~] the employer, then [~~such~~]  
4 the employer shall be liable to pay all compensation under the  
5 Workers' Compensation Act to the same extent as if the work  
6 were done without the intervention of such contractor. The  
7 work so procured to be done shall not be construed to be  
8 "casual employment".

9 B. Any employer who procures any work to be done  
10 for him and who pays directly or indirectly for workers'  
11 compensation benefits pursuant to the Workers' Compensation  
12 Act for the work so procured is entitled to the protections  
13 provided by the act."

14 Section 3. Section 52-5-1 NMSA 1978 (being Laws 1987,  
15 Chapter 342, Section 30, as amended) is amended to read:

16 "52-5-1. PURPOSE. --It is the intent of the legislature  
17 in creating the workers' compensation administration that the  
18 laws administered by it to provide a workers' benefit system  
19 be interpreted to assure the quick and efficient delivery of  
20 indemnity and medical benefits to injured and disabled workers  
21 at a reasonable cost to the employers [~~who~~] that are subject  
22 to the provisions of the Workers' Compensation Act and the New  
23 Mexico Occupational Disease Disablement Law. It is the  
24 specific intent of the legislature that benefit claims cases  
25 be decided on their merits and that the common law rule of

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1 "liberal construction" based on the supposed "remedial" basis  
2 of workers' benefits legislation shall not apply in these  
3 cases. The workers' benefit system in New Mexico is based on  
4 a mutual renunciation of common-law rights and defenses by  
5 employers and employees alike. Accordingly, the legislature  
6 declares that the Workers' Compensation Act and the New Mexico  
7 Occupational Disease Disablement Law are not remedial in any  
8 sense and are not to be given a broad liberal construction in  
9 favor of the claimant or employee on the one hand, nor are the  
10 rights and interests of the employer to be favored over those  
11 of the employee on the other hand. An employer shall be  
12 subjected to only one cause of action for claims of accidental  
13 injury arising out of and in the course of employment, and no  
14 other sources of recovery from or paid for by the employer  
15 shall be allowed if workers' compensation benefits are  
16 recoverable."

17 Section 4. Section 52-5-17 NMSA 1978 (being Laws 1986,  
18 Chapter 22, Section 43, as amended) is amended to read:

19 "52-5-17. SUBROGATION. --

20 A. The right of any worker or, in case of his  
21 death, of those entitled to receive payment or damages for  
22 injuries or disablement occasioned to him by the negligence or  
23 wrong of any person other than the employer or any other  
24 employee of the employer, including a management or  
25 supervisory employee, shall not be affected by the Workers'

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1 Compensation Act or the New Mexico Occupational Disease  
2 Disablement Law, but the claimant shall not be allowed to  
3 receive payment or recover damages for those injuries or  
4 disablement and also claim compensation from the employer  
5 except as provided in Subsection C of this section.

6 B. In a circumstance covered by Subsection A of  
7 this section, the receipt of compensation from the employer  
8 shall operate as an assignment to the employer or his insurer,  
9 guarantor or surety of any cause of action, to the extent of  
10 payment by the employer to or on behalf of the worker for  
11 compensation or any other benefits to which the worker was  
12 entitled [~~under~~] pursuant to the Workers' Compensation Act or  
13 the New Mexico Occupational Disease Disablement Law and that  
14 were occasioned by the injury or disablement, that the worker  
15 or his legal representative or others may have against any  
16 other party for the injury or disablement.

17 C. The worker or his legal representative may  
18 retain any compensation due [~~under~~] pursuant to the uninsured  
19 motorist coverage provided in Section 66-5-301 NMSA 1978 if  
20 the worker paid the premium for that coverage. If the  
21 employer paid the premium [the worker or his legal  
22 representative may not retain any compensation due under  
23 Section 66-5-301 NMSA 1978, and that amount shall be due to  
24 the employer] and the worker is eligible to recover workers'  
25 compensation benefits, any payments pursuant to Section

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1 66-5-301 NMSA 1978 are barred to that worker with regard to  
2 the coverage paid for by the employer and, for the purpose of  
3 eligibility for recovery from other sources of that same  
4 compensation, the employer-paid coverage shall be deemed to  
5 have been exhausted. For the purposes of this section, the  
6 employer shall not be deemed to pay the premium for uninsured  
7 motorist coverage in a lease arrangement in which the employer  
8 pays the worker an expense or mileage reimbursement amount  
9 that may include as one factor an allowance for insurance  
10 coverage. "