

1 SENATE BILL 233

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO INSURANCE; AMENDING THE WORKERS' COMPENSATION ACT
12 AND THE NEW MEXICO OCCUPATIONAL DISEASE DISABLEMENT LAW TO
13 CHANGE TEMPORARY DISABILITY BENEFITS; PROVIDING FOR LIFETIME
14 MAXIMUM PERIOD.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 52-1-41 NMSA 1978 (being Laws 1959,
18 Chapter 67, Section 20, as amended) is amended to read:

19 "52-1-41. COMPENSATION BENEFITS--TOTAL DISABILITY.--

20 A. For total disability, the worker shall receive,
21 during the period of that disability, sixty-six and two-thirds
22 percent of [~~his~~] the worker's average weekly wage, and not to
23 exceed a maximum compensation of eighty-five percent of the
24 average weekly wage in the state, a week, effective July 1,
25 1987 through December 31, 1999, and thereafter not to exceed a

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1 maximum compensation of one hundred percent of the average
2 weekly wage in the state, a week; and to be not less than a
3 minimum compensation of thirty-six dollars (\$36.00) a week.

4 [~~Except as provided in Subsections B and C of this section, the~~
5 ~~worker shall receive compensation benefits for the remainder of~~
6 ~~his life.~~]

7 B. For permanent total disability as set forth in
8 Section 52-1-25 NMSA 1978, the worker shall receive
9 compensation benefits for the remainder of the worker's life.
10 For temporary disability as set forth in Section 52-1-25.1 NMSA
11 1978, the maximum period of compensation is subject to the
12 maximum duration and limitation on compensation benefits set
13 forth in Section 52-1-47 NMSA 1978.

14 C. For disability resulting from primary mental
15 impairment, the maximum period of compensation is [~~one hundred~~
16 ~~weeks~~] the maximum period allowable for a physical injury, as
17 set forth in Sections 52-1-26 and 52-1-42 NMSA 1978, and
18 subject to the maximum duration and limitations on compensation
19 benefits set forth in Section 52-1-47 NMSA 1978. For
20 disability resulting in secondary mental impairment, the
21 maximum period of compensation is the maximum period allowable
22 for the disability produced by the physical impairment, [~~or one~~
23 ~~hundred weeks, whichever is greater.~~

24 ~~G.~~] as set forth in Section 52-1-26 or 52-1-43 NMSA
25 1978 and Section 52-1-42 NMSA 1978, and subject to the maximum

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1 duration and limitations on compensation benefits set forth in
2 Section 52-1-47 NMSA 1978.

3 D. For the purpose of paying compensation benefits
4 for death, pursuant to Section 52-1-46 NMSA 1978, the worker's
5 maximum disability recovery shall be deemed to be seven hundred
6 weeks.

7 ~~[D.]~~ E. Where the worker's average weekly wage is
8 less than thirty-six dollars (\$36.00) a week, the compensation
9 to be paid the worker shall be ~~[his]~~ the worker's full weekly
10 wage.

11 ~~[E.]~~ F. For the purpose of the Workers'
12 Compensation Act, the average weekly wage in the state shall be
13 determined by the ~~[employment security division of the labor]~~
14 workforce solutions department on or before June 30 of each
15 year and shall be computed from all wages reported to the
16 ~~[employment security division]~~ workforce solutions department
17 from employing units, including reimbursable employers, in
18 accordance with the ~~[regulations]~~ rules of the ~~[division]~~
19 department for the preceding calendar year, divided by the
20 total number of covered employees divided by fifty-two.

21 ~~[F.]~~ G. The average weekly wage in the state,
22 determined as provided in Subsection ~~[E]~~ F of this section,
23 shall be applicable for the full period during which
24 compensation is payable when the date of the occurrence of an
25 accidental injury falls within the calendar year commencing

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1 January 1 following the June 30 determination.

2 [G-] H. Unless the computation provided for in
3 Subsection [E] F of this section results in an increase or
4 decrease of two dollars (\$2.00) or more, raised to the next
5 whole dollar, the statewide average weekly wage determination
6 shall not be changed for any calendar year."

7 **SECTION 2.** Section 52-1-42 NMSA 1978 (being Laws 1959,
8 Chapter 67, Section 21, as amended) is amended to read:

9 "52-1-42. COMPENSATION BENEFITS--PERMANENT PARTIAL
10 DISABILITY--MAXIMUM DURATION OF BENEFITS.--

11 A. For permanent partial disability, the workers'
12 compensation benefits not specifically provided for in Section
13 52-1-43 NMSA 1978 shall be a percentage of the weekly benefit
14 payable for total disability as provided in Section 52-1-41
15 NMSA 1978. The percentage of permanent partial disability
16 shall be determined pursuant to the provisions of Sections
17 52-1-26 through 52-1-26.4 NMSA 1978. The duration of partial
18 disability benefits shall depend upon the extent and nature of
19 the partial disability, subject to the following:

20 (1) where the worker's percentage of
21 disability is equal to or greater than eighty, the maximum
22 period is seven hundred weeks;

23 (2) where the worker's percentage of
24 disability is less than eighty, the maximum period is five
25 hundred weeks;

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1 (3) where the partial disability results from
2 a primary mental impairment, the maximum period is [~~one hundred~~
3 ~~weeks~~] the maximum period allowable for a physical injury, as
4 set forth in Section 52-1-26 NMSA 1978, and subject to the
5 maximum duration and limitations on compensation benefits set
6 forth in Section 52-1-47 NMSA 1978; and

7 (4) where the partial disability results from
8 a secondary mental impairment, the maximum period is the
9 maximum period allowable for the disability produced by the
10 physical impairment, [~~or one hundred weeks, whichever is~~
11 ~~greater~~] as set forth in Section 52-1-26 or 52-1-43 NMSA 1978,
12 and subject to the maximum duration and limitations on
13 compensation benefits set forth in Section 52-1-47 NMSA 1978.

14 B. If an injured worker receives temporary [~~total~~]
15 disability benefits prior to an award of permanent partial
16 disability benefits, the maximum period for permanent partial
17 disability benefits shall be reduced by the number of weeks the
18 worker actually receives temporary [~~total~~] disability
19 benefits."

20 SECTION 3. Section 52-1-47 NMSA 1978 (being Laws 1959,
21 Chapter 67, Section 26, as amended) is amended to read:

22 "52-1-47. LIMITATIONS ON COMPENSATION BENEFITS.--Subject
23 to the limitation of compensation payable under Subsection G of
24 Section 52-1-46 NMSA 1978 and except for provision of lifetime
25 benefits for permanent total disability awarded pursuant to

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1 Section 52-1-41 NMSA 1978:

2 A. compensation benefits for any combination of
3 disabilities, whether temporary or permanent, or any
4 combination of disabilities and death shall not be payable for
5 a period in excess of seven hundred weeks;

6 B. compensation benefits for any combination of
7 disabilities or any combination of disabilities and death shall
8 not exceed an amount equal to seven hundred multiplied by the
9 maximum weekly compensation payable at the time of the
10 accidental injury resulting in the disability or death under
11 Section 52-1-41 NMSA 1978, exclusive of increased compensation
12 that may be awarded under Sections 52-1-10, 52-1-28.1 and
13 52-1-46 NMSA 1978 and exclusive of any attorney fees awarded
14 under Section 52-1-54 NMSA 1978;

15 C. in no case shall compensation benefits for
16 disability continue after the disability ends or after the
17 death of the injured worker; and

18 D. the compensation benefits payable by reason of
19 disability caused by accidental injury shall be reduced by the
20 compensation benefits paid or payable on account of any prior
21 injury suffered by the worker if compensation benefits in both
22 instances are for injury to the same member or function or
23 different parts of the same member or function or for
24 disfigurement and if the compensation benefits payable on
25 account of the subsequent injury would, in whole or in part,

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1 duplicate the benefits paid or payable on account of [~~such~~] the
2 prior injury."

3 SECTION 4. Section 52-3-14 NMSA 1978 (being Laws 1945,
4 Chapter 135, Section 14, as amended) is amended to read:

5 "52-3-14. COMPENSATION--LIMITATIONS.--

6 A. The compensation to which [~~an employee~~] a worker
7 who has suffered disablement, or [~~his~~] the worker's dependents,
8 shall be entitled under the New Mexico Occupational Disease
9 Disablement Law is limited to the provisions of that law. No
10 compensation shall be due or payable under the New Mexico
11 Occupational Disease Disablement Law for any disablement
12 [~~which~~] that does not result in either the temporary
13 disablement of the [~~employee~~] worker lasting for more than
14 seven days or in [~~his~~] the worker's permanent disablement as
15 herein described or in death; provided, however, that if the
16 period of temporary disablement of the [~~employee~~] worker lasts
17 for more than four weeks from the date of the disablement,
18 compensation under the New Mexico Occupational Disease
19 Disablement Law shall be payable in addition to the amount
20 hereinafter stated in a like amount for the first seven days
21 after the date of disablement. But for any such disablement
22 for which compensation is payable under the New Mexico
23 Occupational Disease Disablement Law, the employer shall in all
24 proper cases, as herein provided, pay to the disabled
25 [~~employee~~] worker or to some person authorized by the director

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1 to receive the same, for the use and benefit of the
2 beneficiaries entitled thereto, compensation at regular
3 intervals of no more than sixteen days apart, in accordance
4 with ~~[the following]~~ this section, less proper deductions on
5 account of default in failure to give notice of such
6 disablement as required in Section 52-3-19 NMSA 1978.

7 B. For total disablement, the ~~[employee]~~ worker
8 shall receive sixty-six and two-thirds percent of ~~[his]~~ the
9 worker's average weekly wage, not to exceed a maximum
10 compensation of eighty-five percent of the average weekly wage
11 in the state, a week, effective July 1, 1987, continuing
12 through December 31, 1999, and thereafter not to exceed a
13 maximum of one hundred percent of the average weekly wage in
14 the state, a week, but not to be less than a minimum
15 compensation of thirty-six dollars (\$36.00) a week, during the
16 period of such disablement, but in no event to exceed a period
17 of seven hundred weeks; provided, however, that ~~[where his]~~
18 when the workers's wages are less than thirty-six dollars
19 (\$36.00) a week, then the compensation to be paid such
20 ~~[employee]~~ worker shall be the full amount of such weekly
21 wages; provided further that the benefits paid or payable
22 during a ~~[employee's]~~ worker's entire period of disablement
23 shall be based on and limited to the benefits in effect on the
24 date of the occurrence of the disablement.

25 C. For partial disablement, the benefits shall be a

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1 percentage of the benefits payable for total disablement
2 calculated under Subsection B of this section as that
3 percentage is determined pursuant to the provisions of Section
4 52-3-4 NMSA 1978. In no event shall the duration of partial
5 benefits extend longer than five hundred weeks.

6 D. In no event shall the duration of any
7 combination of disablements, whether temporary or partial
8 disablements, and death be payable for a period in excess of
9 seven hundred weeks.

10 ~~[D.]~~ E. For the purpose of the New Mexico
11 Occupational Disease Disablement Law, the average weekly wage
12 in the state shall be determined by the ~~[employment security~~
13 ~~division of the labor]~~ workforce solutions department on or
14 before June 30 of each year and shall be computed from all
15 wages reported to the ~~[employment security division]~~ department
16 from employing units, including reimbursable employers, in
17 accordance with the ~~[regulations]~~ rules of the ~~[employment~~
18 ~~security division]~~ department for the preceding calendar year,
19 divided by the total number of covered employees divided by
20 fifty-two. The first such determination by the employment
21 security division of the average weekly wage in the state shall
22 be made on or before June 30, 1975 from reported wages and
23 covered employees for the calendar year ending December 31,
24 1974.

25 ~~[E.]~~ F. The average weekly wage in the state,

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1 determined as provided in Subsection ~~[D]~~ E of this section,
2 shall be applicable for the full period during which
3 compensation is payable when the date of the occurrence of the
4 disablement falls within the calendar year commencing January 1
5 following the June 30 determination.

6 ~~[F-]~~ G. Unless the computation provided for in
7 Subsection ~~[D]~~ E of this section results in an increase or
8 decrease of two dollars (\$2.00) or more, raised to the next
9 whole dollar, the statewide average weekly wage determination
10 shall not be changed for any calendar year.

11 ~~[G-]~~ H. In case death proximately results from the
12 disablement within the period of two years, compensation
13 benefits to be paid such ~~[employee]~~ worker shall be in the
14 amounts and to the persons as follows:

15 (1) if there are no dependents, the
16 compensation shall be limited to the funeral expenses not to
17 exceed seven thousand five hundred dollars (\$7,500) and the
18 expenses provided for medical and hospital services for the
19 deceased, together with such other sums as the deceased may
20 have been paid for disablement; or

21 (2) if there are dependents at the time of
22 death, the payment shall consist of a sum not to exceed seven
23 thousand five hundred dollars (\$7,500) for funeral expenses and
24 expenses provided for medical and hospital services for the
25 deceased, together with such other sums as the deceased may

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1 have been paid for disability, and a percentage specified in
2 this paragraph for average weekly wages subject to the
3 limitations of the New Mexico Occupational Disease Disablement
4 Law to continue for the period of seven hundred weeks from the
5 date of death of such ~~[employee]~~ worker; provided that the
6 total death compensation, unless otherwise specified, payable
7 in any of the cases mentioned in this section shall not be less
8 than the minimum weekly compensation provided in Subsection B
9 of this section or more than the maximum weekly compensation
10 provided in Subsection B of this section and shall be based on
11 and limited to the benefits in effect on the date of the
12 occurrence of the disablement. If there are dependents
13 entitled thereto, compensation shall be paid to the dependents
14 or to the person authorized by the director or the court to
15 receive the same for the benefit of the dependents in such
16 portions and amounts as the director or the court, bearing in
17 mind the necessities of the case and the best interests of the
18 dependents and of the public, may determine, to be computed on
19 the following basis and distributed to the following persons:
20 (a) to the child or children, if there
21 is no widow or widower entitled to compensation, sixty-six and
22 two-thirds percent of the average weekly wage of the deceased;
23 (b) to the widow or widower, if there
24 are no children, sixty-six and two-thirds percent of the
25 average weekly wage of the deceased, until remarriage;

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1 (c) to the widow or widower, if there is
2 a child or children living with the widow or widower, forty-
3 five percent of the [~~average weekly wage~~] compensation rate, as
4 provided in Subsection B of this section, of the deceased, or
5 forty percent, if such child is not or all such children are
6 not living with a widow or widower, and in addition thereto,
7 compensation benefits for the child or children, which shall
8 make the total benefits for the widow or widower and child or
9 children sixty-six and two-thirds percent of the average weekly
10 wage of the deceased. When there are two or more children, the
11 compensation benefits payable on account of such children shall
12 be divided among such children, share and share alike;

13 (d) two years' compensation benefits in
14 one lump sum shall be payable to a widow or widower upon
15 remarriage; however, the total benefits shall not exceed the
16 maximum compensation benefits as provided in Paragraph (2) of
17 this subsection;

18 (e) if there is neither widow, widower
19 nor children, then to the father and mother or the survivor of
20 them if dependent to any extent upon the [~~employee~~] worker for
21 support at the time of [~~his~~] the worker's death, twenty-five
22 percent of the average weekly wage of the deceased; provided
23 that if such father and mother, or the survivor of them, was
24 totally dependent upon such [~~employee~~] worker for support at
25 the time of [~~his~~] the worker's death, [~~he or~~] they shall be

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1 entitled to fifty percent of the average weekly wage of the
2 deceased, subject to the maximum weekly compensation provided
3 for in Subsection B of this section;

4 (f) no disablement benefits payable by
5 reason of [~~an employee's~~] a worker's death shall exceed the
6 maximum weekly compensation provided for in Subsection B of
7 this section, and no dependent or any class thereof other than
8 a widow or widower or children shall in any event be paid total
9 benefits in excess of seven thousand five hundred dollars
10 (\$7,500) exclusive of funeral expenses and the expenses
11 provided for medical and hospital services for the deceased
12 paid for by the employer. If there is neither widow, widower
13 nor children nor dependent parent, then to the brothers and
14 sisters, if actually dependent to any extent upon the deceased
15 for support at the time of [~~his~~] the deceased's death, thirty-
16 five percent of the average weekly wage of the deceased, with
17 fifteen percent additional for brothers or sisters in excess of
18 two, with a maximum of sixty-six and two-thirds percent to be
19 paid to their guardian; provided that the maximum compensation
20 to partial dependents shall not exceed the respective amounts
21 therefor contributed by the deceased employee or the maximum
22 weekly compensation provided for in Subsection B of this
23 section; and

24 (g) in the event of the death or
25 remarriage of the widow or widower entitled to compensation

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1 under this subsection, the surviving children shall then be
2 entitled to compensation computed and paid as in Subparagraph
3 (a) of this paragraph for the remainder of the compensable
4 period, and in the event compensation benefits payable to
5 children as provided in this section are terminated as provided
6 in Paragraph (5) of Subsection A of Section 52-3-13 NMSA 1978,
7 a surviving widow or widower shall then be entitled to
8 compensation benefits computed and paid as provided in
9 Subparagraphs (b) and (d) of this paragraph for the remainder
10 of the compensable period."

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