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FISCAL IMPACT REPORT

SPONSOR Smith ORIGINAL DATE 2/7/16
LAST UPDATED _____ HB _____
SHORT TITLE Workers' Comp Benefit Entitlement SB 249
ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 194

SOURCES OF INFORMATION

LFC Files

Responses Received From

Worker's Compensation Administration (WCA)

Administrative Office of the Courts (AOC)

Office of the Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Bill

Senate Bill 249 terminates a worker's entitlement to disability benefits when an injured worker engages in misconduct or is terminated for cause unrelated to the work injury after returning to work following an injury. The bill also provides for bad faith penalties against an employer who terminates a worker for pre-textual reasons to avoid payment of benefits.

FISCAL IMPLICATIONS

No fiscal implications were reported.

SIGNIFICANT ISSUES

The 1990 Workers' Compensation Act is designed to be formulaic (i.e., if this, then that) so that claims can be paid predictably and consistently and parties know what is expected of them. As part of those balanced interests, the 1990 reforms sought to encourage return to work at all levels and discourage reliance on compensation benefits. *See* NMSA 1978, § 52-1-26:

“To assure that every person who suffers a compensable injury with resulting disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.”

The SB 249 address a Supreme Court decision - *Hawkins v. McDonalds*, 2014-NMSC-048 - which held that termination of post-injury employment, whether for misconduct or not, does not affect a workers’ entitlement to temporary disability benefits or permanent partial disability benefits. In this case, the worker was terminated for violating the employer’s zero-tolerance sexual harassment policy. The court ruled that, despite the worker’s misconduct which led to termination, the employer was still obligated to pay worker temporary disability and modifier benefits because an exception to benefit entitlement has not articulated in law. The Court stated:

“While we recognize that [an] injured employee could intentionally violate company policy in order to get fired and yet be entitled to full [temporary total disability] benefits, we are bound to construe Section 52-1-25.1(B) in favor of providing compensation to an injured worker absent clear statutory language to the contrary. It is not our place to insert language into the WCA that does not exist. That task falls to the Legislature alone.”

WCA states the *Hawkins* decision, and subsequent decisions, discourage employers from bringing the injured employee back to work. The decision further discourages injured workers from being productive and motivated upon returning to work with the at-injury employer.

OTHER SUBSTANTIVE ISSUES

A 2001 Rand Study found that workers’ outcomes are much better when workers can return to work with the at-injury employer (34 days off work for those that return v. 478 days off work for those that do not return).

WCA reports the Advisory Council on Workers’ Compensation and Occupational Disease has endorsed this bill with a vote of 4-1.

The AOC notes the definition of misconduct may be unclear.

KK/jo/jle/jo