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HOUSE BILL 375

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY
TERRY T. MARQUARDT

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING FOR VOLUNTARY
WITHHOLDING OF FEDERAL INCOME TAX.

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

Section 1. Section 51-1-8 NMSA 1978 (being Laws 1936
(S.S.), Chapter 1, Section 6, as amended) is amended to read:

"51-1-8. CLAIMS FOR BENEFITS. --

A. Claims for benefits shall be made in accordance
with such regulations as the secretary may prescribe. Each
employer shall post and maintain printed notices, in places
readily accessible to employees, concerning their rights to file
claims for unemployment benefits upon termination of their
employment. Such notices shall be supplied by the division to
each employer without cost to him.

B. A representative designated by the secretary as a

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1 claims examiner shall promptly examine the application and each
2 weekly claim and, on the basis of the facts found, shall
3 determine whether the claimant is unemployed, the week with
4 respect to which benefits shall commence, the weekly benefit
5 amount payable, the maximum duration of benefits, whether the
6 claimant is eligible for benefits pursuant to Section 51-1-5
7 NMSA 1978 and whether the claimant shall be disqualified
8 pursuant to Section 51-1-7 NMSA 1978. With the approval of the
9 secretary, the claims examiner may refer, without determination,
10 claims or any specified issues involved therein that raise
11 complex questions of fact or law to a hearing officer for the
12 division for a fair hearing and decision in accordance with the
13 procedure described in Subsection D of this section. The claims
14 examiner shall promptly notify the claimant and any other
15 interested party of the determination and the reasons therefor.
16 Unless the claimant or any such interested party, within fifteen
17 calendar days after the date of notification or mailing of such
18 determination, files an appeal from such determination, such
19 determination shall be the final decision of the division;
20 provided that the claims examiner may reconsider a nonmonetary
21 determination if additional information not previously available
22 is provided or obtained or whenever he finds an error in the
23 application of law has occurred, but no redetermination shall be
24 made more than twenty days from the date of the initial
25 nonmonetary determination. Notice of a nonmonetary

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1 redetermination shall be given to all interested parties and
2 shall be subject to appeal in the same manner as the original
3 nonmonetary determination. If an appeal is pending at the time
4 a redetermination is issued, the appeal, unless withdrawn, shall
5 be treated as an appeal from such redetermination.

6 C. In the case of a claim for waiting period credit
7 or benefits, "interested party", for purposes of determinations
8 and adjudication proceedings and notices thereof, means:

9 (1) in the event of an issue concerning a
10 separation from work for reasons other than lack of work, the
11 claimant's most recent employer or most recent employing unit;

12 (2) in the event of an issue concerning a
13 separation from work for lack of work, the employer or employing
14 unit from whom the claimant separated for reasons other than
15 lack of work if he has not worked and earned wages in insured
16 work or bona fide employment other than self-employment in an
17 amount equal to or exceeding five times his weekly benefit
18 amount; or

19 (3) in all other cases involving the allowance
20 or disallowance of a claim, the secretary, the claimant and any
21 employing unit directly involved in the facts at issue.

22 D. Upon appeal by any party, a hearing officer
23 designated by the secretary shall afford the parties reasonable
24 opportunity for a fair hearing to be held de novo, and the
25 hearing officer shall issue findings of fact and a decision

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1 which affirms, modifies or reverses the determination of the
2 claims examiner or tax representative on the facts or the law,
3 based upon the evidence introduced at such hearing, including
4 the documents and statements in the claim or tax records of the
5 [~~department~~] division. All hearings shall be held in accordance
6 with regulations of the secretary and decisions issued promptly
7 in accordance with time lapse standards promulgated by the
8 secretary of the United States department of labor. The parties
9 shall be duly notified of the decision, together with the
10 reasons therefor, which shall be deemed to be the final decision
11 of the department, unless within fifteen days after the date of
12 notification or mailing of such decision further appeal is
13 initiated pursuant to Subsection H of this section.

14 E. Except with the consent of the parties, no
15 hearing officer or members of the board of review, established
16 in Subsection F of this section, or secretary shall sit in any
17 administrative or adjudicatory proceeding in which:

18 (1) either of the parties is related to him by
19 affinity or consanguinity within the degree of first cousin;

20 (2) he was counsel for either party in that
21 action; or

22 (3) he has an interest which would prejudice
23 his rendering an impartial decision.

24 The secretary, any member of the board of review or appeal
25 tribunal hearing officer shall withdraw from any proceeding in

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1 which he cannot accord a fair and impartial hearing. Any party
2 may request a disqualification of any appeal tribunal hearing
3 officer or board of review member by filing an affidavit with
4 the board of review or appeal tribunal promptly upon discovery
5 of the alleged grounds for disqualification, stating with
6 particularity the grounds upon which it is claimed that the
7 person cannot be fair and impartial. The disqualification shall
8 be mandatory if sufficient factual basis is set forth in the
9 affidavit of disqualification. If a member of the board of
10 review is disqualified or withdraws from any proceeding, the
11 remaining members of the board of review may appoint an appeal
12 tribunal hearing officer to sit on the board of review for the
13 proceeding involved.

14 F. There is established within the department for
15 the purpose of providing higher level administrative appeal and
16 review of determinations of a claims examiner or decisions
17 issued by a hearing officer pursuant to Subsection B or D of
18 this section a "board of review" consisting of three members.
19 Two members shall be appointed by the governor with the consent
20 of the senate. The members so appointed shall hold office at
21 the pleasure of the governor for terms of four years. One
22 member appointed by the governor shall be a person who, on
23 account of his previous vocation, employment or affiliation, can
24 be classed as a representative of employers, and the other
25 member appointed by the governor shall be a person who, on

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1 account of his previous vocation, employment or affiliation, can
2 be classed as a representative of employees. The third member
3 shall be an employee of the department appointed by the
4 secretary who shall serve as chairman of the board. Either
5 member of the board of review appointed by the governor who has
6 missed two consecutive meetings of the board may be removed from
7 the board by the governor. Actions of the board shall be taken
8 by majority vote. If a vacancy on the board in a position
9 appointed by the governor occurs between sessions of the
10 legislature, the position shall be filled by the governor until
11 the next regular legislative session. The board shall meet at
12 the call of the secretary. Members of the board appointed by
13 the governor shall be paid per diem and mileage in accordance
14 with the Per Diem and Mileage Act for necessary travel to attend
15 regularly scheduled meetings of the board of review for the
16 purpose of conducting the board's appellate and review duties.

17 G. The board of review shall hear and review all
18 cases appealed in accordance with Subsection H of this section.
19 The board of review may modify, affirm or reverse the decision
20 of the hearing officer or remand any matter to the claims
21 examiner, tax representative or hearing officer for further
22 proceedings. Each member appointed by the governor shall be
23 compensated at the rate of fifteen dollars (\$15.00) for each
24 case reviewed up to a maximum compensation of twelve thousand
25 dollars (\$12,000) in any one fiscal year.

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1 H. Any party aggrieved by a final decision of a
2 hearing officer may file, in accordance with regulations
3 prescribed by the secretary, an application for appeal and
4 review of such decision with the secretary. The secretary shall
5 review the application and shall, within fifteen days after
6 receipt of the application, either affirm the decision of the
7 hearing officer, remand the matter to the hearing officer
8 or the claims examiner for an additional hearing or refer the
9 decision to the board of review for further review and decision
10 on the merits of the appeal. If the secretary affirms the
11 decision of the hearing officer, that decision shall be the
12 final administrative decision of the department and any appeal
13 therefrom ~~[must]~~ shall be taken to the district court in
14 accordance with the provisions of Subsections M and N of this
15 section. If the secretary remands a matter to a hearing officer
16 for an additional hearing, judicial review shall be permitted
17 only after issuance of a final administrative decision. If the
18 secretary refers the decision of the hearing officer to the
19 board of review for further review, the board's decision on the
20 merits of the appeal will be the final administrative decision
21 of the department, which may be appealed to the district court
22 in accordance with the provisions of Subsections M and N of this
23 section. If the secretary takes no action within fifteen days
24 of receipt of the application for appeal and review, the
25 decision will be promptly scheduled for review by the board of

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1 review as though it had been referred by the secretary. The
2 secretary may request the board of review to review a decision
3 of a hearing officer that the secretary believes to be
4 inconsistent with the law or with applicable rules of
5 interpretation or that is not supported by the evidence, and the
6 board of review shall grant the request if it is filed within
7 fifteen days of the issuance of the decision of the hearing
8 officer. The secretary may also direct that any pending
9 determination or adjudicatory proceeding be removed to the board
10 of review for a final decision. If the board of review holds a
11 hearing on any matter, the hearing shall be conducted by a
12 quorum of the board of review in accordance with regulations
13 prescribed by the secretary for hearing appeals. The board of
14 review shall promptly notify the interested parties of its
15 findings of fact and decision. A decision of the board of
16 review on any disputed matter reviewed and decided by it shall
17 be based upon the law and the lawful rules of interpretation
18 issued by the secretary, and it shall be the final
19 administrative decision of the department, except in cases of
20 remand. If the board of review remands a matter to a hearing
21 officer, claims examiner or tax representative, judicial review
22 shall be permitted only after issuance of a final administrative
23 decision.

24 I. Notwithstanding any other provision of this
25 section granting any party the right to appeal, benefits shall

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1 be paid promptly in accordance with a determination or a
2 decision of a claims examiner, hearing officer, secretary, board
3 of review or a reviewing court, regardless of the pendency of
4 the period to file an appeal or petition for judicial review
5 that is provided with respect thereto in Subsection D or M of
6 this section or the pendency of any such filing or petition
7 until such determination or decision has been modified or
8 reversed by a subsequent decision. The provisions of this
9 subsection shall apply to all claims for benefits pending on the
10 date of its enactment.

11 J. If a prior determination or decision allowing
12 benefits is affirmed by a decision of the department, including
13 the board of review or a reviewing court, such benefits shall be
14 paid promptly regardless of any further appeal which may
15 thereafter be available to the parties, and no injunction,
16 supersedeas, stay or other writ or process suspending the
17 payment of such benefits shall be issued by the secretary or
18 board of review or any court, and no action to recover such
19 benefits paid to a claimant shall be taken. If a determination
20 or decision allowing benefits is finally modified or reversed,
21 the appropriate contributing employer's account will be relieved
22 of benefit charges in accordance with Subsection B of Section
23 51-1-11 NMSA 1978.

24 K. The manner in which disputed claims shall be
25 presented, the reports thereon required from the claimant and

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1 from employers and the conduct of hearings and appeals shall be
2 in accordance with rules prescribed by the secretary for
3 determining the rights of the parties, whether or not such rules
4 conform to common law or statutory rules of evidence and other
5 technical rules of procedure. A hearing officer or the board of
6 review may refer to the secretary for interpretation any
7 question of controlling legal significance, and the secretary
8 shall issue a declaratory interpretation, which shall be binding
9 upon the decision of the hearing officer and the board of
10 review. A full and complete record shall be kept of all
11 proceedings in connection with a disputed claim. All testimony
12 at any hearing upon a disputed claim shall be recorded but need
13 not be transcribed unless the disputed claim is appealed to the
14 district court.

15 L. Witnesses subpoenaed pursuant to this section
16 shall be allowed fees at a rate fixed by the secretary. Such
17 fees and all administrative expenses of proceedings involving
18 disputed claims shall be deemed a part of the expense of
19 administering the Unemployment Compensation Law.

20 M. Any determination or decision of a claims
21 examiner or hearing officer or by a representative of the tax
22 section of the department in the absence of an appeal therefrom
23 as provided by this section shall become final fifteen days
24 after the date of notification or mailing thereof, and judicial
25 review thereof shall be permitted only after any party claiming

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1 to be aggrieved thereby has exhausted his remedies as provided
2 in Subsection H of this section. The division and any employer
3 or claimant who is affected by the decision shall be joined as a
4 party in any judicial action involving any such decision. All
5 parties shall be served with an endorsed copy of the petition
6 within thirty days from the date of filing and an endorsed copy
7 of the order granting the petition within fifteen days from
8 entry of the order. Service on the department shall be made on
9 the secretary or his designated legal representative either by
10 mail with accompanying certification of service or by personal
11 service. The division may be represented in any such judicial
12 action by an attorney employed by the department or, when
13 requested by the secretary, by the attorney general or any
14 district attorney.

15 N. The final decision of the secretary or board of
16 review upon any disputed matter may be reviewed both upon the
17 law, including the lawful rules of interpretation issued by the
18 secretary, and the facts by the district court of the county
19 wherein the person seeking the review resides upon certiorari,
20 unless it is determined by the district court where the petition
21 is filed that, as a matter of equity and due process, venue
22 should be in a different county. For the purpose of such
23 review, the division shall return on such certiorari the reports
24 and all of the evidence heard by it on any such reports and all
25 the papers and documents in its files affecting the matters and

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1 things involved in such certiorari. The district court shall
2 render its judgment after hearing, and either the department or
3 any other party thereto affected may appeal from such judgment
4 to the [~~supreme court of the state~~] court of appeals in
5 accordance with the rules [~~governing special statutory~~
6 ~~proceedings~~] of appellate procedure. Such certiorari shall not
7 be granted unless the same is applied for within thirty days
8 from the date of the final decision of the secretary or board of
9 review. Such certiorari shall be heard in a summary manner and
10 shall be given precedence over all other civil cases except
11 cases arising under the Workers' Compensation Act of this state.
12 It shall not be necessary in any proceedings before the division
13 to enter exceptions to the rulings and no bond shall be required
14 in obtaining certiorari from the district court as hereinabove
15 provided, but such certiorari shall be granted as a matter of
16 right to the party applying therefor. "

17 Section 2. A new section of the Unemployment Compensation
18 Law is enacted to read:

19 " [NEW MATERIAL] VOLUNTARY WITHHOLDING OF FEDERAL INCOME
20 TAX. --

21 A. Every individual filing a new claim for
22 unemployment compensation shall, at the time of filing such
23 claim, be advised in writing that:

24 (1) unemployment compensation is subject to
25 federal, state and local income tax;

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1 (2) requirements exist pertaining to estimated
2 tax payments;

3 (3) the individual may elect to have federal
4 income tax deducted and withheld from the individual's
5 unemployment compensation payments at the amount specified in
6 the Internal Revenue Code of 1986; and

7 (4) the individual is permitted to change a
8 previously elected withholding status one time during each
9 benefit year.

10 B. Amounts deducted and withheld from unemployment
11 compensation shall remain in the fund until transferred to the
12 federal internal revenue service.

13 C. The division shall follow all procedures
14 specified by the United States department of labor and the
15 federal internal revenue service pertaining to the deducting and
16 withholding of income tax.

17 D. Amounts shall be deducted and withheld under this
18 section only after amounts are deducted and withheld for any
19 overpayments of unemployment compensation, child support
20 obligations or any other amounts required to be deducted and
21 withheld under the Unemployment Compensation Law.

22 E. The provisions of this section apply to
23 unemployment compensation payments made after December 31,
24 1996. "

25 Section 3. EFFECTIVE DATE. -- The effective date of the

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1 provisions of this act is July 1, 1996.

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State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 6, 1996

Mr. Speaker:

**Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred**

HOUSE BILL 375

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
TAXATION AND REVENUE COMMITTEE.**

Respectfully submitted,

Fred Luna, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HB 375

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Gubbels, Olguin, Taylor, Varela, Rodella

Absent: None

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State of New Mexico House of Representatives

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

February 9, 1996

Mr. Speaker:

**Your TAXATION AND REVENUE COMMITTEE, to whom has
been referred**

HOUSE BILL 375

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.**

Respectfully submitted,

Jerry W. Sandel, Chairman

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/HB 375

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Gallegos, Lovejoy, Sandoval

Absent: Crook, Hawkins,

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 12, 1996

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

HOUSE BILL 375

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
FINANCE COMMITTEE.

Respectfully submitted,

Roman M. Maes, III, Chairman

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: McKibben, Robinson

Absent: None

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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February 13, 1996

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10 Mr. President:

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Your FINANCE COMMITTEE, to whom has been referred

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HOUSE BILL 375

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has had it under consideration and reports same with

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recommendation that it DO PASS.

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Respectfully submitted,

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Ben D. Altamirano, Chairman

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Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Aragon, Doni sthorpe, Ingle, Jennings T., Macias, Nava

Absent: None

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