

SENATE CORPORATIONS AND TRANSPORTATION  
COMMITTEE SUBSTITUTE FOR SENATE BILL 442

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH AND SAFETY; PROVIDING FOR  
EXEMPTION OF CERTAIN NATIONAL GUARD MEMBERS FROM LIMITATION ON  
TIME FOR FILING A WORKERS' COMPENSATION CLAIM.

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

Section 1. Section 52-1-29 NMSA 1978 (being Laws 1959,  
Chapter 67, Section 8, as amended) is amended to read:

"52-1-29. NOTICE OF ACCIDENT TO EMPLOYER--EMPLOYER TO  
POST CLEAR NOTICE OF REQUIREMENT.--

A. Any worker claiming to be entitled to  
compensation from any employer shall give notice in writing to  
his employer of the accident, except as provided in Subsection  
B of this section, within fifteen days after the worker knew,  
or should have known, of its occurrence, unless, by reason of  
his injury or some other cause beyond his control, the worker

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underscored material = new  
[bracketed material] = delete

1 is prevented from giving notice within that time, in which  
2 case he shall give notice as soon as may reasonably be done  
3 and at all events not later than sixty days after the occur-  
4 rence of the accident. No written notice is required to be  
5 given where the employer or any superintendent or foreman or  
6 other agent in charge of the work in connection with which the  
7 accident occurred had actual knowledge of its occurrence.

8 B. A member of the national guard whose injury  
9 occurred while on state-ordered duty and who has received  
10 federal veterans' disability benefits as a result of his  
11 injury while on state-ordered duty in the national guard is  
12 not required to give notice to his employer as required by  
13 Subsection A of this section.

14 ~~[B-]~~ C. Each employer shall post, and keep posted  
15 in conspicuous places upon his premises where notices to  
16 employees and applicants for employment are customarily  
17 posted, a notice that advises workers of the requirement  
18 specified in Subsection A of this section to give the employer  
19 notice in writing of an accident within fifteen days of its  
20 occurrence. The notice shall be prepared or approved by the  
21 director. The failure of an employer to post the notice  
22 required in this subsection shall toll the time a worker has  
23 to give the notice in writing specified in Subsection A of  
24 this section up to but no longer than the maximum sixty-day  
25 period.

1           ~~[G-]~~ D. The notice required in Subsection ~~[B]~~ C of  
 2 this section shall include as an attachment to it a preprinted  
 3 form, which shall be approved by the director, that allows the  
 4 worker to note and briefly describe ~~[the]~~ an accident and sign  
 5 his name. The employer, any superintendent or foreman, or any  
 6 agent of the employer in charge of the work where the accident  
 7 occurred shall also sign the preprinted form that describes  
 8 the accident. That signature shall not be a concession by the  
 9 employer of any rights or defenses. It merely acknowledges  
 10 receipt by the employer or his agent of the form signed by the  
 11 worker. The preprinted form shall be prepared in duplicate so  
 12 that both the worker and the employer can retain copies."

13           Section 2. Section 52-1-31 NMSA 1978 (being Laws 1959,  
 14 Chapter 67, Section 10, as amended) is amended to read:

15           "52-1-31. CLAIM TO BE FILED FOR WORKERS' COMPENSATION--  
 16 EFFECT OF FAILURE TO GIVE REQUIRED NOTICE OR TO FILE CLAIM  
 17 WITHIN TIME ALLOWED.--

18           A. If an employer or his insurer fails or refuses  
 19 to pay a worker any installment of compensation to which the  
 20 worker is entitled under the Workers' Compensation Act, after  
 21 notice has been given as required by Section 52-1-29 NMSA  
 22 1978, it is the duty of the worker insisting on the payment of  
 23 compensation, except as provided in Subsection B of this  
 24 section, to file a claim therefor as provided in the Workers'  
 25 Compensation Act not later than one year after the failure or

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1 refusal of the employer or insurer to pay compensation. This  
2 one-year period of limitations shall be tolled during the time  
3 a worker remains employed by the employer by whom he was  
4 employed at the time of such accidental injury, not to exceed  
5 a period of one year. If the worker fails to give notice in  
6 the manner and within the time required by Section 52-1-29  
7 NMSA 1978 or if the worker fails to file a claim for compen-  
8 sation within the time required by this section, his claim for  
9 compensation, all his right to the recovery of compensation  
10 and the bringing of any proceeding for the recovery of  
11 compensation are forever barred.

12 B. A member of the national guard whose injury  
13 occurred while on state-ordered duty and who has received  
14 federal veterans' disability benefits as a result of his  
15 injury while on state-ordered duty in the national guard is  
16 not subject to the one-year period of limitation on filing a  
17 claim required by Subsection A of this section.

18 ~~[B.]~~ C. In case of the death of a worker who would  
19 have been entitled to receive compensation if death had not  
20 occurred, claim for compensation may be filed on behalf of his  
21 eligible dependents to recover compensation from the employer  
22 or his insurer. Payment may be received or claim filed by any  
23 person whom the director or the court may authorize or permit  
24 on behalf of the eligible beneficiaries. No claim shall be  
25 filed, however, to recover compensation benefits for the death

1 of the worker unless he or someone on his behalf or on behalf  
2 of his eligible dependents has given notice in the manner and  
3 within the time required by Section 52-1-29 NMSA 1978 and  
4 unless the claim is filed within one year from the date of the  
5 worker's death."

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