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HOUSE BILL 204

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY
Patricio Ruiloba

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING DEATH BENEFITS TO
A SPOUSE OF A FIRST RESPONDER REGARDLESS OF REMARRIAGE.

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

SECTION 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986,
Chapter 22, Section 26, as amended) is amended to read:

"52-1-1.1. DEFINITIONS.--As used in Chapter 52, Articles
1 through 6 NMSA 1978:

A. "controlled insurance plan" means a plan of
insurance coverage that is established by an owner or principal
contractor that requires participation by contractors or
subcontractors who are engaged in the construction project,
including coverage plans that are for a fixed term of coverage
on a single construction site;

B. "director" means the director of the workers'

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1 compensation administration;

2 C. "division" means the workers' compensation
3 administration;

4 D. "emergency medical services first responder"
5 means a person who is licensed by the department of health and
6 who functions within the emergency medical services system to
7 provide initial emergency aid;

8 E. "emergency medical technician" means a person
9 who has been licensed by the department of health to provide
10 emergency care;

11 F. "emergency response provider" means a resident
12 of New Mexico who, in response to an emergency, is temporarily
13 assigned by a governmental or nongovernmental relief agency or
14 employer to provide support to the victims of an emergency
15 declared by the president of the United States or the governor
16 of New Mexico;

17 ~~[D-]~~ G. "extra-hazardous employer" means an
18 employer whose injury frequencies substantially exceed those
19 that may reasonably be expected in that employer's business or
20 industry;

21 H. "firefighter" means a full-time or part-time
22 member or a volunteer member of a fire department that is part
23 of or administered by the state or any political subdivision of
24 the state and any red-carded firefighter trained in wildland
25 firefighting skills and hired by the state;

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I. "first responder" means:

- (1) a municipal police officer;
- (2) a county sheriff, deputy sheriff or constable;
- (3) a marshal or deputy marshal;
- (4) a New Mexico ranger;
- (5) a New Mexico mounted patrol officer;
- (6) a New Mexico state police officer;
- (7) a member of the New Mexico national guard;
- (8) a member of the New Mexico wing of the civil air patrol;
- (9) a member of search and rescue;
- (10) an emergency medical technician, paramedic or emergency medical services first responder;
- (11) a firefighter; and
- (12) an emergency response provider;

J. "paramedic" means a person who has been licensed by the department of health to provide patient care;

~~[E-]~~ K. "rolling wrap-up or consolidated insurance plan" means coverage for an ongoing project or series of projects in which the common insurance program remains in place indefinitely and contracted work is simply added as it occurs under the control of one owner or principal contractor;

~~[F-]~~ L. "workers' compensation judge" means an individual appointed by the director to act as a workers'

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1 compensation judge in the administration of the Workers'
2 Compensation Act or the New Mexico Occupational Disease
3 Disablement Law;

4 [G.] M. "workman" or "workmen" means worker or
5 workers;

6 [H.] N. "Workmen's Compensation Act" means the
7 Workers' Compensation Act; and

8 [I.] O. "workmen's compensation administration" or
9 "administration" means the workers' compensation
10 administration."

11 SECTION 2. Section 52-1-17 NMSA 1978 (being Laws 1965,
12 Chapter 295, Section 10, as amended) is amended to read:

13 "52-1-17. DEPENDENTS.--

14 A. As used in the Workers' Compensation Act, unless
15 the context otherwise requires, the following persons, and they
16 only, shall be deemed dependents and entitled to compensation
17 under the provisions of the Workers' Compensation Act:

18 [A.] (1) a child under eighteen years of age
19 or incapable of self-support and unmarried or under twenty-
20 three years of age if enrolled as a full-time student in any
21 accredited educational institution;

22 [B.] (2) the widow or widower, only if living
23 with the deceased at the time of [~~his~~] the deceased's death or
24 legally entitled to be supported by [~~him~~] the deceased,
25 including a divorced spouse entitled to alimony;

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1 [~~E-~~] (3) a parent or grandparent, only if
2 actually dependent, wholly or partially, upon the deceased; and

3 [~~D-~~] (4) a grandchild, brother or sister, only
4 if under eighteen years of age or incapable of self-support and
5 wholly dependent upon the deceased.

6 B. The relation of dependency must exist at the
7 time of the injury.

8 [~~E-~~] C. Except as provided in Subsection D of this
9 section, questions as to [~~who~~] which persons constitute
10 dependents and the extent of their dependency shall be
11 determined as of the date of the injury, and [~~their~~] the right
12 to any death benefit shall cease upon the happening of any one
13 of the following [~~contingencies~~] contingencies:

14 (1) upon the marriage of the widow or widower;

15 (2) upon a child, grandchild, brother or
16 sister reaching the age of eighteen years, unless the child,
17 grandchild, brother or sister at such time is physically or
18 mentally incapacitated from earnings, or upon a dependent
19 child, grandchild, brother or sister becoming self-supporting
20 prior to attaining that age or if a child, grandchild, brother
21 or sister over eighteen years of age who is enrolled as a full-
22 time student in any accredited educational institution ceases
23 to be so enrolled or reaches the age of twenty-three. A child,
24 grandchild, brother or sister who originally qualified as a
25 dependent by virtue of being less than eighteen years of age

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1 may, upon reaching age eighteen, continue to qualify if
2 physically or mentally incapable of self-support, actually
3 dependent or enrolled in an educational institution; or

4 (3) upon the death of any dependent.

5 D. The remarriage of a widow or widower of a first
6 responder who died of a compensable injury occurring in the
7 course and scope of employment or while providing services as a
8 volunteer shall not render the widow or widower ineligible for
9 death benefits."

10 SECTION 3. Section 52-1-46 NMSA 1978 (being Laws 1959,
11 Chapter 67, Section 25, as amended) is amended to read:

12 "52-1-46. COMPENSATION BENEFITS FOR DEATH.--Subject to
13 the limitation of compensation payable under Subsection G of
14 this section, if an accidental injury sustained by a worker
15 proximately results in the worker's death within the period of
16 two years following the worker's accidental injury,
17 compensation shall be paid in the amount and to the persons
18 entitled thereto as follows:

19 A. if there are no eligible dependents, except as
20 provided in Subsection C of Section 52-1-10 NMSA 1978 of the
21 Workers' Compensation Act, the compensation shall be limited to
22 the funeral expenses, not to exceed seven thousand five hundred
23 dollars (\$7,500), and the expenses provided for medical and
24 hospital services for the deceased, together with all other
25 sums that the deceased should have been paid for compensation

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1 benefits up to the time of the worker's death;

2 B. if there are eligible dependents at the time of
3 the worker's death, payment shall consist of a sum not to
4 exceed seven thousand five hundred dollars (\$7,500) for funeral
5 expenses and expenses provided for medical and hospital
6 services for the deceased, together with such other sums as the
7 deceased should have been paid for compensation benefits up to
8 the time of the worker's death and compensation benefits to the
9 eligible dependents as hereinafter specified, subject to the
10 limitations on maximum periods of recovery provided in Sections
11 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978;

12 C. if there are eligible dependents entitled
13 thereto, compensation shall be paid to the dependents or to the
14 person authorized by the director or appointed by the court to
15 receive the same for the benefit of the dependents in such
16 portions and amounts, to be computed and distributed as
17 follows:

18 (1) if there is no widow or widower entitled
19 to compensation, sixty-six and two-thirds percent of the
20 average weekly wage of the deceased to the child or children;

21 (2) except as provided in Subsection H of this
22 section, if there are no children, sixty-six and two-thirds
23 percent of the average weekly wage of the deceased to the widow
24 or widower, until remarriage; or

25 (3) if there is a widow or widower and

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1 children:

2 (a) if all the children are living with
3 the widow or widower, forty-five percent of the weekly
4 compensation benefits as provided in Sections 52-1-41 through
5 52-1-43 and 52-1-47 NMSA 1978 to the widow or widower and
6 fifty-five percent divided equally to the children; or

7 (b) if no child is living with a widow
8 or widower, forty percent of the weekly compensation benefits
9 as provided in Sections 52-1-41 through 52-1-43 and 52-1-47
10 NMSA 1978 to the widow or widower and sixty percent divided
11 equally to the children; and

12 (4) except for a widow or widower of a first
13 responder, two years' compensation benefits in one lump sum
14 shall be payable to a widow or widower upon remarriage;
15 however, the total benefits shall not exceed the maximum
16 compensation benefit as provided in Subsection B of this
17 section;

18 D. if there is neither widow, widower nor children,
19 compensation may be paid to the father and mother or the
20 survivor of them, if dependent to any extent upon the worker
21 for support at the time of the worker's death, twenty-five
22 percent of the average weekly wage of the deceased, and in no
23 event shall the maximum compensation to such dependents exceed
24 the amounts contributed by the deceased worker for their care;
25 provided that if the father and mother, or the survivor of

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1 them, was totally dependent upon such worker for support at the
2 time of the worker's death, they shall be entitled to fifty
3 percent of the average weekly wage of the deceased;

4 E. if there is neither widow, widower nor children
5 nor dependent parent, then to the brothers and sisters and
6 grandchildren if actually dependent to any extent upon the
7 deceased worker for support at the time of the worker's death,
8 thirty-five percent of the average weekly wage of the deceased
9 worker with fifteen percent additional for brothers and sisters
10 and grandchildren in excess of two, with a maximum of sixty-six
11 and two-thirds percent of the average weekly wage of the
12 deceased, and in no event shall the maximum compensation to
13 partial dependents exceed the respective amounts contributed by
14 the deceased worker for their care;

15 F. except as provided in Subsection H of this
16 section, in the event of the death or remarriage of the widow
17 or widower entitled to compensation benefits as provided in
18 this section, the surviving children who are eligible
19 dependents shall [~~then~~] be entitled to compensation benefits
20 computed and paid as provided in Paragraph (1) of Subsection C
21 of this section for the remainder of the compensable period and
22 such compensation benefits shall cease as provided by
23 Subsection C of Section 52-1-17 NMSA 1978. In the event
24 compensation benefits payable to children as provided in this
25 section are terminated as provided in Subsection [~~E~~] C of

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1 Section 52-1-17 NMSA 1978, a surviving widow or widower shall
2 then be entitled to compensation benefits computed and paid as
3 provided in Paragraphs (2) and (4) of Subsection C of this
4 section for the remainder of the compensable period; ~~and~~

5 G. no compensation benefits payable by reason of a
6 worker's death shall exceed the maximum weekly compensation
7 benefits as provided in Sections 52-1-41 through 52-1-43 and
8 52-1-47 NMSA 1978, and no dependent or any class thereof, other
9 than a widow, widower or children, shall in any event be paid
10 total benefits in excess of seven thousand five hundred dollars
11 (\$7,500) exclusive of funeral expenses and the expenses
12 provided for medical and hospital services for the deceased
13 paid for by the employer; and

14 H. the remarriage of a widow or widower of a first
15 responder who died of a compensable injury occurring in the
16 course and scope of employment or while providing services as a
17 volunteer shall not render the widow or widower ineligible for
18 death benefits."

19 SECTION 4. APPLICABILITY.--The provisions of this act
20 apply to a claim for workers' compensation benefits based on a
21 compensable injury that occurs on or after the effective date
22 of this act.

23 SECTION 5. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2016.