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AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE WORKERS'
COMPENSATION ACT TO REESTABLISH RETURN TO WORK AND CLARIFY
BENEFIT ENTITLEMENT.

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

SECTION 1. Section 52-1-25.1 NMSA 1978 (being Laws 1990
(2nd S.S.), Chapter 2, Section 10, as amended) is amended to
read:

"52-1-25.1. TEMPORARY TOTAL DISABILITY--RETURN TO
WORK.--

A. As used in the Workers' Compensation Act,
"temporary total disability" means the inability of a worker,
by reason of accidental injury arising out of and in the
course of the worker's employment, to perform the duties of
that employment prior to the date of the worker's maximum
medical improvement.

B. If, prior to the date of maximum medical
improvement, an injured worker's health care provider
releases the worker to return to work and the employer does
not make a reasonable work offer at the worker's pre-injury
wage, the worker shall receive temporary total disability
compensation benefits equal to two-thirds of the worker's
pre-injury wage.

C. If, prior to the date of maximum medical

1 improvement, an injured worker's health care provider
2 releases the worker to return to work and the worker returns
3 to work at less than the worker's pre-injury wage, the worker
4 shall receive temporary total disability compensation
5 benefits equal to two-thirds of the difference between the
6 worker's pre-injury wage and the worker's post-injury wage.

7 D. A worker is not entitled to temporary total
8 disability benefits as set forth in Subsection B or C of this
9 section if:

10 (1) the employer makes a reasonable work
11 offer at or above the worker's pre-injury wage, within
12 medical restrictions, if any, as stated by the health care
13 provider pursuant to Section 52-1-49 NMSA 1978, and the
14 worker rejects the offered employment;

15 (2) the worker accepts employment with
16 another employer at or above the worker's pre-injury wage; or

17 (3) the worker is terminated for misconduct
18 connected with the employment that is unrelated to the
19 workplace injury; if the workers' compensation judge finds
20 that an employer terminated the worker for pretextual reasons
21 as a way of attempting to avoid payment of benefits to the
22 worker or as retaliation against the worker for seeking
23 benefits, the worker shall be entitled to temporary total
24 disability benefits and the employer shall be subject to
25 penalties as set forth in Sections 52-1-28.1 and 52-1-28.2

1 NMSA 1978.

2 E. Upon a finding that an employer has terminated
3 a worker for pretextual reasons, the workers' compensation
4 judge at the judge's discretion may also impose an additional
5 fine, not to exceed ten thousand dollars (\$10,000), on the
6 employer, to be paid to the worker.

7 F. Notwithstanding the provisions of this section,
8 the employer shall continue to provide reasonable and
9 necessary medical care pursuant to Section 52-1-49 NMSA 1978.

10 G. If there is a dispute between the parties
11 regarding the reasonableness of the employer's work offer or
12 the worker's refusal to return to work, the workers'
13 compensation judge shall decide if the work offer or the
14 worker's refusal to return to work is reasonable based on all
15 of the circumstances."

16 SECTION 2. Section 52-1-26 NMSA 1978 (being Laws 1987,
17 Chapter 235, Section 12, as amended) is amended to read:

18 "52-1-26. PERMANENT PARTIAL DISABILITY.--

19 A. As a guide to the interpretation and
20 application of this section, the policy and intent of this
21 legislature is declared to be that every person who suffers a
22 compensable injury with resulting permanent partial
23 disability should be provided with the opportunity to return
24 to gainful employment as soon as possible with minimal
25 dependence on compensation awards.

1 B. As used in the Workers' Compensation Act,
2 "partial disability" means a condition whereby a worker, by
3 reason of injury arising out of and in the course of
4 employment, suffers a permanent impairment.

5 C. Permanent partial disability shall be
6 determined by calculating the worker's impairment as modified
7 by the worker's age, education and physical capacity,
8 pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978;
9 provided that, regardless of the actual calculation of
10 impairment as modified by the worker's age, education and
11 physical capacity, the percentage of disability awarded shall
12 not exceed ninety-nine percent.

13 D. On or after the date of maximum medical
14 improvement, the worker's permanent partial disability rating
15 shall be equal to the worker's impairment and shall not be
16 subject to the modifications calculated pursuant to Sections
17 52-1-26.1 through 52-1-26.4 NMSA 1978 if:

18 (1) the worker returns to work at a wage at
19 or above the worker's pre-injury wage;

20 (2) the worker accepts employment with
21 another employer at or above the worker's pre-injury wage;

22 (3) the employer makes a reasonable work
23 offer, at or above the worker's pre-injury wage, within
24 medical restrictions, if any, as stated by the health care
25 provider pursuant to Section 52-1-49 NMSA 1978, and the

1 worker rejects the offered employment; or

2 (4) the worker is terminated for misconduct
3 connected with the employment that is unrelated to the
4 workplace accident; if the workers' compensation judge finds
5 that an employer terminates the worker for pretextual reasons
6 to avoid payment of benefits to the worker or as retaliation
7 against the worker for seeking benefits, the worker shall be
8 entitled to modifier benefits and the employer shall be
9 subject to penalties as set forth in Sections 52-1-28.1 and
10 52-1-28.2 NMSA 1978.

11 E. Upon a finding that an employer has terminated
12 a worker for pretextual reasons, the workers' compensation
13 judge at the judge's discretion may also impose an additional
14 fine, not to exceed ten thousand dollars (\$10,000), on the
15 employer, to be paid to the worker.

16 F. In considering a claim for permanent partial
17 disability, a workers' compensation judge shall not receive
18 or consider the testimony of a vocational rehabilitation
19 provider offered for the purpose of determining the existence
20 or extent of disability.

21 G. If there is a dispute between the parties
22 regarding the reasonableness of the employer's work offer or
23 the worker's refusal to return to work, the workers'
24 compensation judge shall decide if the work offer or the
25 worker's refusal to return to work is reasonable based on all

1 of the circumstances." _____

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