

HOUSE FLOOR SUBSTITUTE FOR  
HOUSE BILL 268

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO WORKERS' COMPENSATION; CREATING A PRESUMPTION THAT  
CORONAVIRUS DISEASE 2019 IS AN INJURY BY ACCIDENT ARISING OUT  
OF AND IN THE COURSE OF EMPLOYMENT FOR ESSENTIAL EMPLOYEES;  
PERMITTING EMPLOYERS TO REBUT THAT PRESUMPTION; PROHIBITING  
WORKERS' COMPENSATION INSURERS FROM USING CORONAVIRUS DISEASE  
2019 CLAIMS IN DEVELOPING RATING PLANS; DECLARING AN EMERGENCY.

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

SECTION 1. Section 52-1-19 NMSA 1978 (being Laws 1975,  
Chapter 284, Section 6, as amended) is amended to read:

"52-1-19. INJURY BY ACCIDENT--COURSE OF EMPLOYMENT--  
CORONAVIRUS DISEASE 2019--PRESUMPTION.--

A. As used in the Workers' Compensation Act, unless  
the context otherwise requires, "injury by accident arising out  
of and in the course of employment" shall:

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(1) include:

(a) accidental injuries to workers and death resulting from accidental injury as a result of their employment and while at work in any place where their employer's business requires their presence; ~~[but shall]~~ and

(b) the contraction of coronavirus disease 2019 caused by the novel coronavirus by any essential employee from the effective date of this 2021 act until January 31, 2023 or until businesses located in New Mexico are legally permitted to operate at one hundred percent of capacity, whichever occurs first; provided that the presumption in Subsection B of this section applies and is not rebutted pursuant to Subsection C of this section; and

(2) not include injuries to any worker occurring while on ~~[his]~~ the worker's way to assume the duties of ~~[his]~~ the worker's employment or after leaving such duties, the proximate cause of which is not the employer's negligence.

B. If an essential employee is diagnosed with coronavirus disease 2019 caused by the novel coronavirus, and the essential employee has established that the employer has not strictly complied with the public health orders related to the coronavirus disease 2019 in effect at any time during the fourteen days prior to the diagnosis, the condition is presumed to be:

(1) an accidental injury arising out of and in

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1 the course of employment;

2 (2) reasonably incident to and proximately  
3 caused by employment; and

4 (3) a disability that is a natural and direct  
5 result of the accident.

6 C. The presumptions created in Subsection B of this  
7 section may be rebutted by a preponderance of evidence  
8 establishing that the employee:

9 (1) engaged in conduct or activities outside  
10 of employment that substantially violated the public health  
11 orders related to the coronavirus disease 2019 in effect at any  
12 time during the fourteen days prior to the diagnosis; or

13 (2) came in contact with an individual who had  
14 a positive diagnosis for the coronavirus disease 2019 at that  
15 time, or a subsequent diagnosis that would have corresponded to  
16 the time of the contact with the employee, and that contact  
17 occurred outside of employment and during the fourteen days  
18 prior to the diagnosis of the employee.

19 D. As used in this section, "essential employee"  
20 means any school personnel, public safety employee, health care  
21 professional or first responder who, in the execution of the  
22 essential employee's duties, comes in contact with an  
23 individual who had a positive diagnosis for the coronavirus  
24 disease 2019 at that time, or a subsequent diagnosis that would  
25 have corresponded to the time of the contact with the employee;

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1 provided that the employee was required to work at the physical  
2 location of employment at any time, up to twenty days prior to  
3 the diagnosis of coronavirus disease 2019; and provided further  
4 that the employee does not work for a business whose testing  
5 and tracing plans have been approved by the department of  
6 health."

7 SECTION 2. Section 59A-17-8 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 304, as amended) is amended to read:

9 "59A-17-8. MAKING OF RATES--WORKERS' COMPENSATION--RATE  
10 CALCULATIONS--RATE CLASSIFICATIONS.--

11 A. A workers' compensation insurer shall adhere to  
12 a uniform classification system and uniform experience rating  
13 system filed with the superintendent by an advisory  
14 organization designated by the superintendent.

15 B. A workers' compensation insurer shall report its  
16 experience in accordance with the statistical plans and other  
17 reporting requirements in use by the advisory organization  
18 designated by the superintendent.

19 C. Workers' compensation premium rates shall be  
20 equalized and calculated on a basis that does not discriminate  
21 against or penalize employers who pay higher wages than other  
22 employers to workers in the same job classification. The  
23 legislature finds that calculating workers' compensation  
24 premium rates strictly on the basis of an employer's wages paid  
25 discriminates against and penalizes higher-paying employers.

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1 The legislature accordingly directs that the superintendent  
2 shall:

3 (1) investigate alternatives to the current  
4 method of computing workers' compensation premiums, including  
5 but not limited to:

- 6 (a) split classification;
- 7 (b) payroll cap;
- 8 (c) hours worked; and
- 9 (d) premium credits;

10 (2) immediately conduct hearings on the issue,  
11 including consideration of other alternatives; and

12 (3) adopt regulations, to become effective no  
13 later than April 1, 1991, to equalize the workers' compensation  
14 premium rates employers must pay for workers who perform the  
15 same job. Nothing in this subsection shall be construed to  
16 prohibit the use of experience rating or scheduled credits.

17 D. A workers' compensation insurer may develop  
18 subclassifications of the uniform classification system upon  
19 which rates may be made. Such subclassifications and their  
20 filing shall be subject to all applicable provisions of the  
21 Insurance Rate Regulation Law. Data produced from such  
22 subclassifications shall be reported in accordance with the  
23 statistical plans, uniform classification system and experience  
24 rating system in use by the advisory organization designated by  
25 the superintendent.

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1           E. Classification assignments may be changed within  
2 sixty days of the effective date or renewal date of the policy;  
3 provided that the employer is given reasonable prior notice of  
4 the proposed change in order to object; and provided further  
5 that the change is based upon an appropriate audit or  
6 investigation. The same provisions apply to initial  
7 classification assignments for new operations added by the  
8 employer so that they may be changed within sixty days of the  
9 date the classification assignments are initially established.  
10 No subsequent changes shall be made unless the insurer proves,  
11 after conducting an audit or investigation, that:

12                   (1) there has been a substantial change in the  
13 nature of the work performed; or

14                   (2) the initial assignment was in error due to  
15 withheld or inaccurate material information provided by the  
16 employer.

17           F. A workers' compensation insurer may develop  
18 rating plans that identify loss experience as a factor to be  
19 used. The rating plans and their filing shall be subject to  
20 all applicable provisions of the Insurance Rate Regulation Law.

21           G. The superintendent shall disapprove  
22 subclassifications, rating plans or other variations from  
23 supplementary rate information filed by a workers' compensation  
24 insurer if the insurer:

25                   (1) fails to demonstrate that the data

1 produced can be reported consistent with the uniform  
2 classification system and experience rating system and in such  
3 a fashion so as to allow for the application of experience  
4 rating filed by the advisory organization designated by the  
5 superintendent; or

6 (2) uses any data related to claims arising  
7 from coronavirus disease 2019 for which an injury by accident  
8 arising out of and in the course of employment is presumed  
9 pursuant to Section 52-1-19 NMSA 1978 in developing a rating  
10 plan."

11 SECTION 3. EMERGENCY.--It is necessary for the public  
12 peace, health and safety that this act take effect immediately.

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