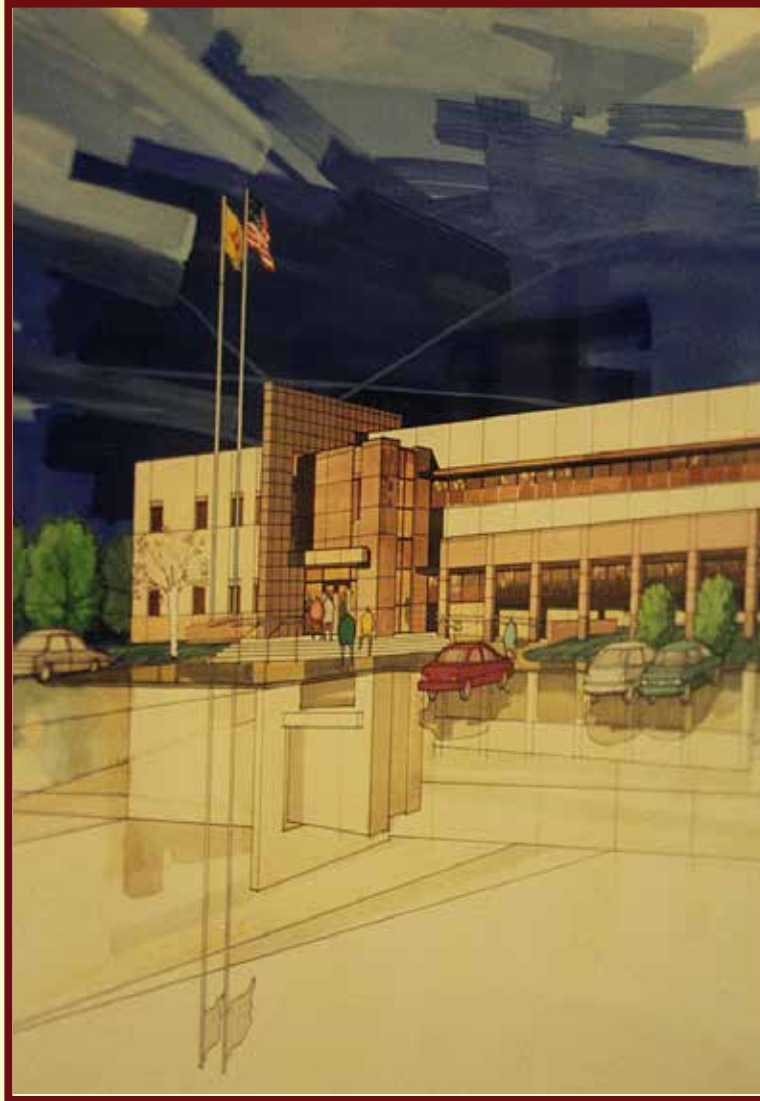


Employer Guidebook



STATE OF NEW MEXICO

Workers' Compensation
Administration

ONE TEAM | ONE GOAL

A Better New Mexico for Workers and Employers



STATE OF NEW MEXICO
Workers' Compensation
Administration

Employer Guidebook

A Guide to Your Rights and Responsibilities
Under New Mexico Workers' Compensation Law
2022 Edition

This book is based upon the law and rules in effect through May 2017. Laws and rules can change by acts of the Legislature, rule making by the Workers' Compensation Administration, or decisions of the state's higher courts. Learn about current laws affecting your case by contacting the Workers' Compensation Administration.

New Mexico Workers' Compensation Administration

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<https://workerscomp.nm.gov>

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The New Mexico Workers' Compensation Administration

About this Guidebook

This book provides a general guide to the workers' compensation system for employers in New Mexico, focusing on issues such as coverage, costs, worker benefits, regulations and claims processing.

In addition to the Guidebook for Employers, the Workers' Compensation Administration (WCA) has publications on its website that go into detail on a variety of workers' compensation topics.

The WCA also provides in-person seminars and outreach on the topic of workers' compensation.

A good resource for the topic of workers' compensation in New Mexico is the Workers' Compensation Association of New Mexico. The Association is not affiliated with the WCA.

Laws can change. Before relying on this or any other publication, make sure the information you have is current. You may consult with a WCA ombudsman with questions, or with an attorney who specializes in workers' compensation.

Throughout this book, reference will be made to insurers. When using the term 'insurer,' the concept includes conventional workers' compensation insurance carriers as well as self-insured employers (individuals and groups).

Employer Resources

New Mexico Taxation and Revenue

<http://www.tax.newmexico.gov/>

Payments for the workers' compensation fee are made through the Department of Taxation and Revenue.

New Mexico Office of Superintendent of Insurance

<https://www.osi.state.nm.us/>

The OSI maintains a premium comparison guide for many kinds of insurance, to include workers' compensation.

New Mexico Department of Workforce Solutions

<https://www.dws.state.nm.us/>

Find information on hiring, unemployment insurance, labor relations and more.

New Mexico Environment Department - OSHA

https://www.env.nm.gov/Ohsb_Website/index.htm

The Occupational Health and Safety Bureau (OSHA) enforces the New Mexico Health and Safety Act, and provides health and safety assistance to employers.

New Mexico Small Business Development Centers

<http://www.nmsbdc.org>

Small Business Development Centers provide help, resources and training to startups as well as existing businesses.

New Mexico State Government

<https://www.nm.gov/>

Find links to all branches of New Mexico's state government.

U.S. Department of Labor

<https://www.dol.gov>

The Department of Labor provides resources on labor, the workplace, and work-related issues.

Workers' Compensation in New Mexico

New Mexico became a state in 1912, and the New Mexico state legislature passed its first workers' compensation law in 1929. The Workers' Compensation Act (the Act) was created to balance the interests of workers and employers. In exchange for purchasing a workers' compensation insurance policy that provided benefits to workers regardless of fault, employers could not be sued by an injured worker under tort liability. Thus, under this "no fault" system, workers had the security of receiving prompt medical care, and, when applicable, monetary compensation after a workplace injury or illness. Employers had the certainty of predictable costs through the exclusive remedy of workers' compensation insurance.

While workers could not sue their employers under the "no fault" system, they often had to rely on district courts to decide on the amount of compensation they would receive. This was a lengthy and expensive process. To rectify the situation, in 1986 the New Mexico Legislature created the New Mexico Workers' Compensation Administration (WCA). The WCA handles workers' compensation cases through an administrative court rather than district courts. This change allowed for a faster resolution of cases and encouraged workers to return to work more quickly.

New Mexico's workers' compensation law was revamped again in 1990, after problems with insurance availability and premium increases arose. Dramatic changes were made to workers' compensation law and to the responsibilities given to the Workers' Compensation Administration.

The agency's responsibilities expanded over time until in addition to its judicial functions, it was tasked with prosecuting fraud, providing ombudsman assistance to workers and employers, regulating self-insured employers and providing safety guidance and inspections to certain employers. To better serve all New Mexico residents, the agency established field offices across the state.

The WCA's mission is to assure the quick and efficient delivery of benefits to injured workers at a reasonable cost to employers. It works steadfastly to maintain a balance between the interests of workers and employers. The WCA has jurisdiction over most businesses in New Mexico.

The WCA works with the Advisory Council on Workers' Compensation and Occupational Disease Disablement to identify issues and needs of both workers and employers, and presents the issues to the New Mexico Legislature in the form of proposed legislation. The Advisory Council is made up of three business and three labor representatives. Its mission is to monitor the performance of the workers' compensation and occupational disease disablement system, and to make recommendations related to the adoption of rules and legislation.

Getting Started with Workers' Compensation

The New Mexico Workers' Compensation Act affects many New Mexico employers. Both new and established businesses must determine whether or not they are required to carry workers' compensation insurance.

Once an employer determines workers' compensation insurance is required for the business, certain requirements must quickly be fulfilled:

- Obtain workers' compensation insurance coverage.
- Pay the workers' compensation assessment fee to the New Mexico Department of Taxation and Revenue.
- Display the Workers' Compensation Act poster in an appropriate location, along with the Notice of Accident form.
- Comply with workers' compensation safety inspection requirements.

Determining whether or not to obtain insurance and how to fulfill each of the listed requirements are explained more thoroughly in this book. Other workers' compensation topics covered in the book include medical and indemnity benefits, and what to do if an accident has occurred.

It is our hope that this book will answer most questions about workers' compensation insurance. If you have additional questions, please visit our website, or contact an ombudsman. Contact information is listed below and on the back of this book.

Ombudsman Program

The WCA's Ombudsman Program provides a neutral source of information for workers, employers and other parties. The service is free of charge.

Ombudsmen are specialists who explain how the workers' compensation system works. They also help resolve disputes. Ombudsmen can be reached by phone, but you may also request to meet with one in person. Ombudsmen are available at all WCA offices, so you can contact the office nearest you. Some ombudsmen are bilingual in English and Spanish, so if help is needed in Spanish, you will be connected to a Spanish-speaking ombudsman.

Ombudsmen will explain your rights, responsibilities and options, or they may contact the other party and attempt to resolve your problem. Ombudsmen are not advocates for any party. They cannot give legal advice. Ombudsmen cannot assist any party who is represented by an attorney nor on any claim that is in the formal adjudication phase.



New Mexico Workers' Compensation Administration, Albuquerque

Determining Insurance Coverage

Requirements of Employee Coverage

Workers' compensation insurance protects your business and your assets. All businesses that employ three or more workers are required by law to have workers' compensation coverage. Coverage may be purchased voluntarily if the business has fewer than three employees.

For the purpose of determining three or more, every person who does the work of the business entity may be considered an employee of the business. This includes the owner of the business if the owner works in the business, family members, and part-time, temporary and seasonal workers.

There are some exceptions, however. Coverage is not required for domestic servants or for real estate salespeople. Coverage is not required for federal employees covered by the Federal Employees' Compensation Act or other federal programs.

Executive employees or sole proprietors with a financial interest who are employed by the professional or business corporation or limited liability company can elect not to accept the provisions of the Act. They can do so by filing their decision with their insurance carrier and the Director of the WCA using the *Executive Employee Affirmative Action Election* form. Despite opting out, the executive must still be counted for determining the number of workers.

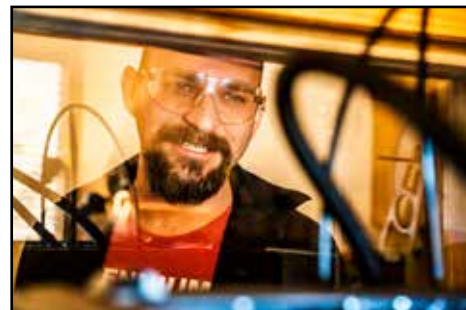
Construction

New Mexico workers' compensation law requires coverage for **all** employees engaged in construction activities. Therefore, all employers required to be licensed under the provision of the Construction Industries Licensing Act must purchase coverage **regardless of the number of employees.**

This provision applies to out-of-state contractors working in New Mexico as well as domestic contractors. Under the Construction Industries Licensing Act, the Construction Industries Division (CID) is authorized to revoke or suspend a license for failure to maintain coverage as required by law.

A construction corporation, partnership or LLC must have coverage even if there is only one executive employee. Any executive employee will be counted, which triggers the insurance coverage requirement. However, to save money on insurance premiums (which are based on the company's payroll), executive employees may exempt themselves from coverage by filing the *Executive Employee Affirmative Action Election* form with your insurance carrier. A sole proprietor in the construction industry may choose not to acquire coverage by likewise submitting the *CID Sole Proprietor Affirmative Election* form. Contact the WCA's Employer Compliance Bureau to see if you meet the qualifying requirements.

Please consult the glossary section of this workbook for the meaning of sole proprietor or executive employee, as defined by the Workers' Compensation Act.



Determining Employee Coverage

The employment scene has changed dramatically in recent years. Share companies have introduced an employment dynamic that makes it more important than ever for business owners to clearly define who is an employee and who is not. Today's workforce is increasingly flexible, and includes independent contractors, leased employees, temporary workers, and workers on call.

Independent Contractors

Employers are exempt from providing workers' compensation insurance for independent contractors. Knowing whether someone is an employee or an independent contractor depends on the facts in each case, and is getting more difficult to determine. In the past, the rule was that an individual was an independent contractor if the payer had the right to control or direct only the result of the work and not what, or how, the work would be done. However, newly issued federal labor rules have substantially changed this definition, and most analysts agree that many independent contractors must now be considered employees. To assist in determining an employee's status, use the assessment tools provided by the IRS (www.irs.gov).

With this in mind, a person who has been injured while working for or with your business might attempt to claim workers' compensation benefits under your coverage even if you did not consider that person to be your employee. Insurance companies know this can happen and policy language allows them to retroactively charge premium to cover the risk. Insurers base their decisions on their knowledge of previous claims filed by those in similar situations. If a person claiming to be an employee in a certain situation had claimed benefits in the workers' compensation hearing, and the judge had found the insurer responsible to pay the claim, then they reason they will be responsible for similar cases in the future.

Although an employer may end up paying more for coverage if this occurs, the good news is that the insurance company will likely cover any such claim, thereby eliminating a potentially devastating financial hardship from a lawsuit.

Executive Employees

Employees of a corporation who are also officers or executives of the corporation may choose to exempt themselves from coverage. This exemption is limited to the chairman of the board, president, vice president, secretary, treasurer or other executive officer, and only if that employee owns 10 percent or more of the corporation's stock. The same applies for executive employees of a limited liability company (LLC). When electing an exemption, fill out the *Executive Employee Affirmative Election* form, which your insurer can provide for you.

In counting the number of employees of the corporation or LLC to determine whether it must have coverage, officers or executives who have exempted themselves must still be counted. For example, if a company has three employees, including the one exempted executive employee, the company must acquire coverage for the other two employees. Since the salaries of the exempted individuals are not counted in determining the premium, there is a cost savings to the business for doing this. On the downside, creating this exemption means that exempt executives would not be able to make a claim for benefits if injured at work. Also, when this exemption has been taken, exempted individuals do not have to pay the workers' compensation assessment fee.

Family Members

There are no special exemptions for family members who are employees. Coverage is required for family members just as for any other employee. If family members are executive employees, they may exempt themselves if they qualify as previously described.

Part-Time Workers

Part-time workers must be counted for the coverage requirement. An employer who has three workers, even if they are part-time, must obtain coverage.

Temporary and Seasonal Workers

Workers employed seasonally or on a temporary basis also fall under the coverage requirement.

Nonprofit Organizations

Nonprofit, charitable and religious organizations are not exempt. They must have coverage if they otherwise fall within the coverage requirements.

Exempt From Mandatory Coverage

If a business is exempt from the requirement, it may choose to come under the protection of the Workers' Compensation Act voluntarily and acquire insurance coverage. This protects the workers in case of injury, and protects the business from lawsuits through the exclusive remedy doctrine of workers' compensation.

An employer in an exempt category who chooses to have coverage may file an *Election to Accept* form with the WCA, or by purchasing coverage.

Employers without workers' compensation coverage do not have any special protection in case of a workplace injury. An employee injured at work is free to file a tort liability lawsuit against an employer, without defined limits on the damage award.

Penalties for Non-Coverage

Businesses that fail to obtain workers' compensation insurance despite being legally required to do so may incur penalties ranging in severity from monetary fines to injunctions against the business. The WCA Employer Compliance Bureau will contact the uninsured

business, and if it refuses to obtain coverage, the business owner will be summoned for a hearing at the WCA.

The WCA always prefers that businesses obtain coverage rather than have to go through the enforcement process.

See the Enforcement chapter of this book on page 39 for further details on non-coverage. For any questions, it is best to contact an attorney or the WCA.

Uninsured Employers' Fund

If an accident occurs and the business does not have insurance as required by law, then that business can be liable for paying the cost of medical treatment and a percentage of the injured worker's wages. If the employer does not pay, the injured worker may file the claim with the Uninsured Employers' Fund (UEF). The UEF may pay those expenses, and will then seek reimbursement from the employer, plus interest, penalties, costs, and attorney fees. State law gives the UEF the right to go to district court and ask to seize the employer's property, real estate, bank accounts, and vehicles in order to be reimbursed.

A company with three or more employees total, and at least one working in New Mexico, whether the employment is permanent, temporary or transitory, must carry workers' compensation insurance. This is the case whether the workers are residents or non-residents of the state.

Out-Of-State Employers with Operations in New Mexico

A business not located in the state that employs workers in New Mexico engaged in activities required to be licensed under New Mexico's Construction Industries Licensing Act must carry worker's compensation insurance regardless of the number of workers employed.

If a business is insured in another state and its insurance carrier is also licensed in New Mexico, it can get an endorsement from a

carrier to cover its New Mexico employees for accidents in New Mexico. If the insurer is not licensed in New Mexico, the business will have to obtain a New Mexico policy.

If a business prefers to self-insure its New Mexico operations, it can apply to the WCA to be a certified self-insurer. Financial and other requirements must be met.



On Or Near A Reservation: Tribal Sovereignty Issues

A business that operates on a Native American reservation is not necessarily immune from the New Mexico workers' compensation law because of tribal sovereignty. The guideline is that tribal sovereignty primarily applies to economic enterprises of the tribe, particularly on tribal land.

Some tribes choose to have workers' compensation coverage for their tribal enterprises. Other tribes choose to require private businesses located on their land to provide workers' compensation coverage.

The New Mexico WCA does not have enforcement authority on tribal land, absent their consent; however, the tribes may choose to enforce the requirement.

If a private business is located on tribal land and a workers' compensation claim or coverage dispute occurs, it may be resolved in tribal court or in the WCA administrative law court, depending on the circumstances.

Contact an attorney for more information.



Obtaining Workers' Compensation Insurance

Finding Insurance Coverage

New Mexico employers required by law to obtain workers' compensation insurance have several options when it comes to finding insurance coverage. The best option depends upon business needs.

Commercial Insurance Market

Private commercial insurance companies provide workers' compensation insurance in what is called the voluntary market. The insurance carrier must be licensed by the New Mexico Office of the Superintendent of Insurance, and its premium rates must be approved by that agency.

Self-Insurance

Some large businesses and governmental entities are permitted to provide their own insurance coverage. The rules for qualifying as a self-insured employer are set forth by the director of the WCA. Every company that wishes to self-insure must apply to the WCA and receive written approval from the director before it can choose this option.

Group Self-Insurance

A group of employers in the same or similar industry may join together for group self-insurance coverage. Typically, this is done through an industry association. WCA approval is required, based on standards set by law. Group self-insurance differs from commercial insurance because group members take on a major responsibility called *joint and several liability*. All members of the group may be legally responsible for losses within the group should the group become insolvent.

Assigned Risk Pool

Businesses with poor safety records or in high-risk industries that cannot get coverage in the commercial or group self-insurance markets may acquire coverage from the state assigned risk pool. The pool also provides coverage for many new, small businesses until they can acquire

coverage in the commercial market. Coverage in the pool is more expensive than in the voluntary market.

Insurance coverage in the pool is provided by several insurance companies designated by the Superintendent of Insurance as *servicing carriers*. Any business person unable to find insurance in the voluntary market should contact an insurance agent about obtaining coverage in the pool.

High Deductible Policies

Some employers in the commercial market may be eligible for large or high deductible policies. Under such policies, the employer has a deductible that has been agreed to between the employer and the insurer.

With such a policy, the insurance carrier is responsible for managing the claim and paying all benefits, just as if the policy had no deductible. The employer then reimburses the insurance carrier for the agreed deductible. A high deductible allows the employer to save money on premiums in return for assuming a greater degree of the risk. It does not, however, give the employer control of the claim. Employers report claims just as if there were no deductible, and should not attempt to pay bills or benefits themselves. Benefit payments must come from the insurance carrier.

Employee Leasing

Employee leasing organizations and professional employment organizations (PEOs) provide workers to companies in New Mexico that need employees. The Employee Leasing Act mandates that no company or person can conduct business in New Mexico unless registered with the Employee Leasing Program regulated by the New Mexico Regulation and Licensing Department.

If an employee leasing company or PEO provides workers compensation coverage to a business as

part of their contract, New Mexico law requires that each separate business must have their own workers' compensation policy in order to conduct business in the state. Employee leasing companies and PEOs typically purchase workers' compensation insurance through commercial insurance carriers. If a business uses a leasing company or PEO, it is prudent to find out the name of the insurance carrier and obtain clear and specific information on what to do and who will manage the claim in case of worker injury.

Employee leasing is regulated by the New Mexico Regulation and Licensing Department. Prospective leasing contractors and employers who wish to check whether their leasing contractor is properly registered may contact the Employee Leasing Bureau at (505) 476-4853, or check the website at www.rld.state.nm.us.

Employers may also wish to check with the WCA Employer Compliance Bureau to make sure the leasing contractor has a workers' compensation insurance policy in effect.

Businesses that want to ensure they purchase insurance from a reputable insurance company can contact the New Mexico Office of the Superintendent of Insurance (OSI), www.osi.state.nm.us/. Also, visit the A.M. Best Company, www.ambest.com/home/default.aspx, to determine a company's financial strength and ability to meet ongoing obligations to policyholders, or ask an insurance agent to provide that information.



Insurance Premiums

The premium for a workers' compensation insurance policy is set to match the risk of claims against that policy and the likely cost of those claims, based upon state and national averages.

The premium is determined by several factors:

- How much employees are paid, as expressed by actual payroll;
- The type of work the employees do and how hazardous that work is, according to national averages (job classifications); and
- The claims and safety history of the company, expressed as an "experience modifier."

An application for insurance is completed with the help of an insurance agent and then forwarded to an insurance company underwriter who assigns ratings to the job classifications of the employees.

The amount of premium billed at the beginning of a policy year is an estimate, based on the company's expected annual payroll, and may be altered if circumstances change during the policy year. Once a policy is in place, it covers all employees working in the business, except executive employees who have opted out. If additional employees are hired during the policy year, those employees are automatically covered.

Insurance companies generally audit payroll at the end of the policy year and adjust the final bill for the amount of premium owed, based upon actual total payroll and type of work performed. If the payroll determined at audit is different than the payroll estimated at the beginning of the policy period, the business will either receive a bill for additional premium or a refund if the payroll decreased. Businesses that consider adding employees to the workforce must remember to consider the additional premium as part of insurance costs.

As a part of the premium determination, insurance companies utilize a factor called an experience modifier, or *e-mod*. The experience modifier is based on the frequency and severity of claims as determined by data on each employer that is collected from insurance carriers by the National Council on Compensation Insurance. A modifier of 1.0 means the employer is average for the industry. New businesses begin with a 1.0 modifier. A business with a better than average safety and claims record over time may have its modifier lowered to .80 or .70, for example. Conversely, a higher risk business will have its modifier increased to 1.20 or 1.30.

Safety Results in Lower Premiums

Because the experience modifier is used as a multiplier of the total premium, it is a powerful incentive for employers to embrace a safety conscious workplace. An employer with a good safety record may enjoy a significantly lower premium than an unsafe employer in the same industry. Therefore, a good safety record becomes a competitive and financial advantage for the safety-conscious employer.

Workplace safety also saves in other measurable ways, such as lower employee turnover and training costs, and less time spent responding to accidents and injuries. Safety awareness is part of a productive workplace and helps make businesses more profitable. See information about the free and professional safety services of the WCA in the Safety section of this book on page 28.

Rates in the Assigned Risk Pool

Insurance costs are higher in the assigned risk pool than in the voluntary market. All insureds in the pool must pay a surcharge of 10 percent on the base premium rate (the base rate is called the manual premium).

Another surcharge may be added to the businesses in the pool. This is called the Assigned Risk Adjustment Program (ARAP), and is based upon severity of losses as measured by the total claim cost. The ARAP may be applied when a business has higher risk. Businesses in the pool should have a long-term goal to get out of the pool by finding coverage in the voluntary market or with a self-insured group.

Insurance Audits

Employers can expect to have the business' payroll audited every year. Insurers do this to ensure the premium they receive is enough to compensate for the risk they are insuring. Audits also work in favor of the employer if payroll, and therefore the risk of claims, has decreased during the policy year.

Insurance Audit Disputes

Sometimes the carrier claims that certain individuals were covered employees and that the employer owes premium for them. If the employer believes these individuals were independent contractors, not employees, then disagreements over premiums can occur. It is important to understand the distinction between independent contractors and employees. Visit the New Mexico Taxation and Revenue Department online to learn more:

<http://www.tax.newmexico.gov/Businesses/independent-contractors-vs-employees.aspx>

Avoiding Errors and Fraud

The insurer has the right to receive premium for the entire risk being covered. Failure to disclose payroll honestly, or deliberately trying to deceive an insurer about the number of employees in a business is fraud.

Some employers try to keep their premiums down by artificially reducing their experience modifier. They do so by paying claims out of pocket and not reporting them to the insurer. This practice is illegal. It is important to note that payment of benefits out of pocket by an employer does not necessarily prevent the worker from later filing a workers' compensation claim against the employer. Paying claims out of pocket may deprive the injured employee of important benefits. Occasionally, what appears to be a minor injury may develop serious and costly complications over time. Utilizing insurance coverage would pay for the worker's indemnity benefits and all future medical costs.

When a claim is established, the injured worker has rights and benefits guaranteed by law. If the employer has not established a claim with an insurer, the worker may eventually have expenses that are beyond the company's means, and a very difficult situation could follow. The purpose of workers' compensation insurance is to provide coverage when it is needed and medical benefits for treatment related to an illness or injury. Depriving an employee of that safety net can expose a business to possible financial ruin.

Employer Requirements

Employer Requirements

In addition to providing workers' compensation insurance, employers must also fulfill other duties required by the Workers' Compensation Act. Each of the following bulleted items will be reviewed in detail throughout this chapter. Employers must:

- Pay the workers' compensation assessment fee to the New Mexico Department of Taxation and Revenue.
- Display the Workers' Compensation Act poster in an appropriate location, along with the Notice of Accident form.
- Comply with workers' compensation safety inspection requirements.
- A written drug- and alcohol-free safe workplace policy if the employer wants to seek a reduction in workers' compensation indemnity benefits when a worker's intoxication contributed to a workplace injury or death.



The Workers' Compensation Assessment Fee

Every employer required to be covered by the Workers' Compensation Act, or who elects to do so, and every employee covered by the Act, must pay a quarterly fee called the workers' compensation assessment fee (§ 52-5-19 NMSA 1978). The fee is similar to a tax.

The fee is \$4.30 per employee per calendar quarter. The employer's contribution is \$2.30 multiplied by the number of covered employees working on the last working day of the quarter. The fee for covered employees working on the last working day of the quarter is \$2 per employee, which should be taken as a payroll deduction.

Payment is due by the last day of the month following the end of the quarter.

The quarterly workers' compensation fee is not the same as a workers' compensation insurance premium, and does not provide any insurance coverage. It is simply an administrative fee that funds the Workers' Compensation Administration.

The fees are collected by the New Mexico Taxation and Revenue Department (TRD) and deposited in the Workers' Compensation Administration Fund. Thirty cents per employee of the fee assessed against the employer goes to the Uninsured Employers' Fund (see page 10).

Registering for the Fee

New businesses required to pay the fee must register with the TRD using the *Application for Business Tax Identification Number* form.

Reporting the Fee

With the workers' compensation assessment fee, there is a dual reporting requirement. Forms for both reporting requirements can be found online at the TRD.

1. The *Workers' Compensation Fee Form*, also called a WC-1, is used to file and pay the workers' compensation assessment fee to the TRD. File the WC-1 and pay the fee online at the New Mexico Taxpayer Access Point (TAP). A TAP account is required.

2. The TRD collects information for each employee, the gross wages paid, the state tax withheld and workers' compensation fee collected and remitted to the TRD by using the *Employer's Quarterly Wage and Contribution Report*. Forms are available at the TRD website, www.tax.state.nm.us under Forms and Publications.

The workers' compensation assessment fee is not due for executive employees who have exempted themselves from coverage (see page 11).

Workers' Compensation Act Poster

The workers' compensation poster identifies the employer's workers' compensation insurance carrier or self-insurance coverage. The poster also specifies an injured worker's rights.

Employers required to carry coverage are required to display the Workers' Compensation Act poster in a conspicuous location where employees will have access to it and will be able to read it. Posters are often placed in the employee break room. The poster is not complete unless the Notice of Accident (NOA) form is with it.

On the poster, the employer must fill in the blank box, providing the name of the contact for workers' compensation claims (the insurance carrier, self-insurance program or third-party administrator) and a telephone number. If the insurer cannot provide a local telephone number, contact the WCA.

WCA posters can be downloaded from the website or picked up at one of our offices. Posters are provided free of charge, though alternative posters may be approved by the WCA Director. (See the WCA poster on page 25).

Failure to Display Poster and NOA Forms Together

If an employer fails to display the poster and NOA forms together, the legal requirement that the injured worker notify the employer of the accident and make a claim within 15 days is extended to 60 days. This is a disadvantage for the employer, especially if there is any question about whether the claim was valid. It may be harder to investigate an accident that is reported 60 days after it happened. Additionally, failure to comply with the law may result in a fine.



WORKERS' COMPENSATION ACT

If You Are Injured At Work Si Se Lastima En El Trabajo

1) **Notice** -- In most cases you must tell your employer about the accident within 15 days, using the Notice of Accident Form.

2) **You have the right** to information and assistance from an information specialist known as an Ombudsman at the Workers' Compensation Administration.

3) **Claims information** -- Contact your employer's Claims Representative (see box below).

1) **Aviso** -- En la mayoría de los casos usted debe de avisarle a su empleador del accidente dentro de los primeros 15 días usando las formas de Aviso de Accidente.

2) **Usted tiene el derecho** a información y ayuda contactándose con un especialista en información conocido como "Ombudsman" en la Administración para la Compensación a los Trabajadores.

3) **Información acerca de Reclamaciones** -- Contáctese con el representante de reclamaciones de su compañía.

Employer's Insurer / Claims Representative:

Name: _____
Phone #: _____
Address: _____

Note: Employer must fill in insurer / claims representative information.

YOUR RIGHTS

If you are injured in a work-related accident:

Your employer / insurer must pay all reasonable and necessary medical costs.

You may or may not have the right to choose your health care provider. If your employer / insurer has not given you written instructions about who chooses first, call an ombudsman. In an emergency, get emergency medical care first.

If you are off work for more than seven days, your employer / insurer must pay wage benefits to partially offset your lost wages.

If you suffer "permanent impairment," you may have the right to receive partial wage benefits for a longer period of time.

SUS DERECHOS

Si se lastima en el trabajo:

Su empleador / asegurador debe de pagar por los gastos médicos necesarios y razonables.

Es posible que usted tenga, o no tenga, el derecho de escoger el proveedor de servicios para la salud. Si su empleador / asegurador no le ha dado instrucciones por escrito de quien es el que selecciona primero, pregúntele o llame a un ombudsman. En una emergencia, obtenga asistencia médica de emergencia primero.

Si usted está fuera del trabajo por más de siete días, su empleador / asegurador debe de hacerle un pago compensatorio de prestaciones para compensar parcialmente la pérdida de su salario.

Si usted sufre "daño permanente," usted puede tener el derecho a recibir prestaciones parciales de salario por un periodo de tiempo más largo.

Ombudsmen are located at the following offices:

Albuquerque: 1-866-967-5667 1-505-841-6900	Farmington: 1-800-568-7310 1-505-599-9746	Hobbs: 1-800-934-2450 1-575-397-3425	Las Cruces: 1-800-870-6826 1-575-524-6246	Las Vegas: 1-800-281-7889 1-505-454-9251	Roswell: 1-866-311-8587 1-575-623-3997	Santa Fe: 1-866-311-8587 1-505-476-7381
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If You Need HELP Call:

Ask for an Ombudsman

Si Usted Necesita Ayuda Llame Al:

Pregunte por un Ombudsman

1-866-WORKOMP (1-866-967-5667)

Visit our website at: <https://workerscomp.nm.gov>

For FREE copies of this poster and Notice of Accident Forms call: 1-866-967-5667

USE A NOTICE OF ACCIDENT FORM TO REPORT YOUR ACCIDENT TO YOUR SUPERVISOR

EMPLOYER: You are required by law to display this poster where your employees can read it. Post the Notice of Accident forms with it. The poster without the Notice of Accident forms does not comply with law. You have other rights and duties under the law.

Notice of Accident Form

The Notice of Accident form, or NOA, is a form that allows workers to report any accidents or occupational diseases sustained at work.

A supply of NOA forms should be attached to the WCA poster in the space provided, or adjacent to it. For example, they could be next to the poster on a bulletin board.

NOA forms are the preferred method for workers to provide notification that an accident has occurred.

The employer or a designated person (supervisor or human resources officer) should:

- Sign and date the form.
- Keep one copy and give the other signed, dated copy back to the worker.
- An employer may not use other notice forms except with the approval of the WCA Director.
- An employer may also be considered to have actual notice of an accident in other ways (for example, witnessing the accident).

The law prohibits an employer from firing a worker or from retaliating in any way because a workers' compensation claim was filed. The civil penalty can be up to \$5,000 for retaliation, to be paid by the employer, not the insurance carrier.

NOA forms are free of charge, and can be downloaded from the WCA website and printed out. Photocopies are also acceptable. Make one copy for the worker and one for the employer once it has been filled out. Carbonless copies can also be picked up at a WCA office, or mailed to your workplace if you provide for the cost of the postage. (See the front and back of the NOA form on page 27.)

The law intends for workers to have free and easy access to the forms. It would be contrary to the purpose of the law, for example, for forms to be stored in a supervisor's desk, where the worker has to ask the supervisor for a form in order to fill it out.

NOTICE OF ACCIDENT OR OCCUPATIONAL DISEASE DISABLEMENT NOTIFICACIÓN DE ACCIDENTE O ENFERMEDAD DE OFICIO

In accordance with New Mexico law, Section 52-1-29, Section 52-3-19 and Section 52-1-49, NMSA 1978; NMAC 11.4.4.11
Conforme a la Ley de la Compensación de los Trabajadores, Sección 52-1-29, Sección 52-3-19 y Sección 52-1-49, NMSA 1978; NMAC 11.4.4.11

I, _____, was involved in an on-the-job accident or was disabled
Yo, (name of employee/nombre del empleado) me lastimé en un accidente en el trabajo o fui incapacitado

by an occupational disease at approximately _____, on _____, 20_____.
por enfermedad de oficio aproximadamente (time/a la(s) hora(s)) el (date/fecha) del 20_____.

Employee's social security number: _____ Where did the accident occur? _____
Número de seguro social del empleado: ¿Dónde ocurrió el accidente?

What happened? _____
¿Qué ocurrió?

<p>To be completed by Employer: <i>Completado por el empleador:</i></p> <p>If Yes, Employer has right to change health care provider after 60 days. <i>En caso afirmativo, el empleador tiene derecho a cambiar de proveedor de atención médica después de 60 días.</i></p> <p style="text-align: center;">WORKER'S INITIALS _____</p>	<p>Worker will choose health care provider. Yes ___ No ___ <i>Trabajador elegirá proveedor de atención médica.</i></p> <p>If No, Worker has the right to change health care provider after 60 days. <i>En caso que no elige, el trabajador tiene derecho a cambiar de proveedor de atención médica después de 60 días.</i></p> <p style="text-align: center;">INICIALES DEL TRABAJADOR _____</p>
---	---

Signed: _____ Signed/Notice Received: _____
Firma: (employee/empleado) Firma/Notificación recibida: (employer or representative/empleador o representante)
Date/Fecha: _____ Date/Fecha: _____

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.
PREVIOUS NOA FORMS ARE STILL VALID FOR USE

Form NOA-1 **Employer/employee: Each keep one copy.** **----SEE BACK OF THIS FORM----**
Empleador/empleado: Retener una copia. **----VER AL REVERSO DE ESTA FORMA--**

Worker --
For emergency medical care, go to any emergency medical facility.

Workers and Employers with questions about workers' compensation may contact an Ombudsman at any New Mexico Workers' Compensation Administration office for information and assistance. The offices are open Monday through Friday, 8 a.m. to 5 p.m., except holidays.

Trabajador
Para emergencias médicas vaya a cualquier clinica / hospital.

Trabajadores y empleadores con preguntas acerca de la compensación de los trabajadores pueden comunicarse con un asesor ("ombudsman") a cualquier oficina de la Administración de la Compensación de los Trabajadores para información y asistencia. Las oficinas están abiertas desde las ocho de la mañana hasta las cinco de la tarde de lunes a viernes, con la excepción de días festivos.

Statewide Helpline -- Línea de Asistencia
1-866-WORKOMP / 1-866-967-5667
toll free -- llamada sin costo de larga distancia
New Mexico Workers' Compensation Administration
PO Box 27198, Albuquerque, NM 87125

Albuquerque: (505) 841-6000 - 1 (800) 255-7965	Las Cruces: (575) 524-6246 - 1 (800) 870-6826	Santa Fe: (505) 476-7381
Farmington: (505) 599-9746 - 1 (800) 568-7310	Las Vegas: (505) 454-9251 - 1 (800) 281-7889	
Hobbs: (575) 397-3425 - 1 (800) 934-2450	Roswell: (575) 623-3997 - 1(866) 311-8587	

Safety

Safety is a priority in any workplace. Strong safety standards help prevent accidents. Keeping accidents at a minimum helps keep insurance costs down and makes for a more productive workplace.

Every business should have emergency preparations in place. For example, employees should know the locations of nearby emergency or urgent care facilities and how to contact local emergency services. This is especially important for businesses that have workers off-site or in changing locations.

WCA's Role in Reducing Costs Through Safety

The WCA's staff of safety consultants can provide a range of free safety services at the workplace. Assistance can include safety videos, consultations and safety inspections. Contact the nearest WCA office for more information.

The WCA publishes two booklets devoted to safety. The *Annual Safety Inspections* guide is designed to help businesses implement their own simple safety inspection. The booklet describes the minimum WCA acceptable standards for a safety inspection. Smaller employers who are not required to have inspections are encouraged to use the booklet to do their own self-inspections. *How to Develop a Safety Program* guides business owners and managers on comprehensive safety program planning. Both booklets can be downloaded from the WCA website.

Safety Devices

If employers fail to provide a safety device that is required by law or commonly used in the industry, the injured worker's indemnity benefits can be increased by 10 percent. If an employer provides a safety device and a worker fails to use it, the indemnity benefits can be decreased by 10 percent.

Annual Safety Inspections

New Mexico workers' compensation law (§52-1-6.2 NMSA) requires many employers to perform or receive an annual safety inspection as the first essential step toward eliminating workplace safety hazards. The business is required to have an annual safety inspection if:

- The insurance premium is \$15,000 or more;
- It is a certified self-insured employer or a member of a certified self-insured group.

Businesses notified by the WCA to provide proof of the annual safety inspection will have 30 days to respond to the notice.

The required inspection can be accomplished by:

- A WCA safety consultant.
- A senior manager or dedicated safety professional employed by the business.
- A safety professional from the insurance company when requested by the business.
- A professional independent safety consultant.

Businesses that decide to self-inspect are encouraged to call the WCA and request the services of a safety consultant to provide training on how to conduct a proper safety inspection.

Proof of Safety Inspections

Under the Workers' Compensation Rules (11.4.2.9 NMAC), employers required to have an annual inspection must submit proof of the inspection to the WCA within 60 days of policy issuance or renewal. Generally, this inspection must be a complete inspection of all the employer's facilities in New Mexico. Proof of inspection should be made by using any one of the following methods:

- Your insurer or self-insurance program may notify the WCA that it has completed the annual inspection. The notification should include the business name, address, FEIN (federal employer identification number) and date of inspection.
- Complete the safety affidavit found on the WCA website, and mail it to the WCA. The affidavit must be signed.

Proof of inspections should be sent to:

Safety Program Manager
Workers' Compensation Administration
2410 Centre Ave SE
Albuquerque, NM 87106

Risk Reduction Program

The New Mexico Workers' Compensation Administration is committed to helping employers identify and eliminate occupational hazards in order to prevent workplace accidents. (See NMSA §52-1-6.2 and 11.4.2.9(B) NMAC).

To assist in reducing workplace hazards, the WCA provides an in-depth Risk Reduction Program (RRP) for employers with a higher than average accident frequency for their industry, or if a safety audit reveals a need for assistance. The program guides employers in identification and elimination of occupational hazards, prevention of accidents, and reduction of costs associated with accidents.

The WCA's Safety Program Manager identifies and enrolls companies into the Risk Reduction Program. The program requires:

- Employers and insurers to be notified by letter.
- Consultation with a WCA safety consultant within 30 days of notification. An inspection of your facilities in New Mexico must be completed before the consultation.
- Participants will include the business owner/manager, and insurance company representative, if desired.
- The business will then develop an action plan to address all issues raised in the consultation.
- A follow-up review evaluates effectiveness of the plan.

Employers who have received a notice of classification as an extra hazardous employer have five (5) working days to file a written request for reconsideration with the WCA director. The director may hold hearings upon a request for reconsideration and make a determination as appropriate. See 11.4.2.9(B)(3)(b) NMAC.

Drug- and Alcohol-Free Workplace Policy

New Mexico law provides for a reduction in workers' compensation benefits proportional (from 10% to 90%) to the degree a worker's intoxication contributed to the incident causing injury or death (§ 52-1-12.1 NMSA 1978).

A reduction in benefits is available only to employers who have and implement a written drug- and alcohol-free workplace policy.

Employers cannot claim a reduction in benefits if they knew of the impairment but allowed the worker to remain on the job.

The policy does not affect medical benefits nor death benefits for survivors.

Workplace Injuries

Post-Injury Procedures

Workers who are injured on the job or who develop an occupational illness should get appropriate medical care. Workers' compensation coverage generally pays 100 percent of the medical expenses for a worker injured on the job or as a result of an occupational disease.

Getting Emergency Medical Care

In an emergency, injured workers should seek medical care at the nearest medical care facility. If a business has a preference for a particular health care facility, it should be communicated with employees. However, it should not be imposed as a limitation in an emergency situation. Depending on the business, if employees travel for work-related purposes, covered accidents can occur away from the workplace. The insurer should cover emergency care no matter where it is delivered.

Notification of Accidents

Injured workers generally have 15 days from when they knew or should have known of the accident to provide written notice to the employer. A notice of accident form (NOA) is signed and dated by both worker and employer. An NOA must be provided by the employer, an employer's agent or another person acting in a supervisory capacity so that the injured worker can document the work injury (see pages 24-25).

Actual notice of an accident by a supervisor can substitute for written notice. Actual notice may include direct observation of the accident or the consequences of an accident. Actual notice does not extend the time limitations set forth above. If a worker is prevented from giving notice because of circumstances beyond the worker's control, notice must be given within 60 days.

Once an accident is reported to the employer, the employer should immediately notify their insurance carrier.

Notifying the Insurer

Employers must notify their insurer within 72 hours of getting a notice of accident. Report all workers' compensation claims, even if there is disagreement about their legitimacy. Once the employer has gotten the claim, the insurer manages it and pays the bills.

Employers should provide any information to the insurer to provide insight relevant to the efficient management of the claim. It is important to stay in communication with the adjuster, and to provide relevant documents about the claim and any investigations. Any concerns regarding the claim should be promptly communicated to the insurer. Do not interfere with an employee's right to file the claim.

First Report of Injury or Illness

Once an accident has been reported, employers work with their insurance carriers, or if self-insured or in a self-insured group, their third party administrator. The *Employer's First Report of Injury or Illness*, commonly called a FROI form, will need to be completed. This form must be filed within 10 days of any alleged work-related injury or illness that results in more than seven (7) days of lost work. Missed days do not have to be consecutive. Either the employer or the insurer or self-insurance program must electronically file the FROI with the WCA. There are penalties for not promptly reporting accidents to the insurer, or when required, submitting the report to the WCA.

FROI forms are available from the insurer or self-insurance program. The form can also be downloaded from the WCA website. A business, its insurer, or its self-insurance program are required to provide a copy of the report to the injured worker.

Health Care Provider Selection

Under New Mexico workers' compensation law, one party (employer or worker) selects the initial health care provider (HCP) who will treat the injured worker following an accident.

The law requires the employer to notify the worker in writing on who will make the first selection and, if the employer has first selection, who the HCP will be. Confer with the insurer or self-insurance program for a recommendation on whether the employer or employee should make the first selection.

If the employer's decision on selection of a health care provider is not communicated in writing to the worker, any treatment received will be deemed authorized and will need to be paid for by the employer at least until the employer does give written notice. The selected provider is authorized for at least 60 days. After 60 days, the party that did not make the first selection has the right to change to a different health care provider if they choose. The 60-day period of initial HCP choice runs from the date of first treatment, examination or consultation with the HCP.

Direct communication between an employer and the worker's health care provider should not take place without the worker's written permission.

Post-Accident Drug and Alcohol Testing

Whether to have employees tested for drugs and/or alcohol is up to the employer, who has the right to require drug and alcohol testing as a condition of employment.

If an employer chooses to conduct testing, it is prudent to set up a standard procedure in advance. Consult with an attorney or human resource specialist so that it is clear what to do and what to request if an accident occurs. See page 30 for information on the WCA's Drug- and Alcohol-Free Workplace policy.

Return to Work

An employer may be required to offer a reasonable return to work offer when the doctor states that the worker is medically fit to go back to work and the employer has an appropriate job available. Outcomes are better for everyone when the worker returns to the same employer as soon as possible.



Medical and Indemnity Benefits

Medical Benefits

Injured workers are entitled to reasonable and necessary medical care related to the work-related injury or illness. In some cases, this may extend for life, as there is no dollar or time limit on medical benefits.

The WCA publishes an annual fee schedule that sets the limits on how much is paid for medical services. The agency's Medical Cost Containment Bureau conducts utilization reviews, contracts with case management services, and supports medical committees. Through these efforts and others, the WCA strives to keep medical costs down.

Travel Benefits for Medical Care

If the worker must travel 15 miles or more one way from home or work for health care, the travel will be reimbursed as part of the workers' compensation claim (11.4.3.11 NMAC).

Travel benefits include:

- The ticket cost for travel on a commercial carrier, such as a bus, train or airplane;
- A mileage rate for miles driven by workers who use their own car;
- Hotel or lodging costs if an overnight stay is required;
- Up to \$15 for any one meal, with three (3) meals total and \$30 total reimbursed for a 24 hour period.

Contact an ombudsman for current mileage and per diem rates, or find them under Rule 3 of the Rules and Statutes link on the WCA website. It is important for the worker to keep track of travel expenses, to include itemized receipts, and submit timely requests to the claims adjuster.

Time Off for Medical Appointments

If the worker returned to work, the law does not require the employer to let the worker use paid work time for medical appointments. If the worker must take unpaid time off from work to go to medical appointments, and if the total time exceeds seven (7) work days, the claim will become an indemnity claim and the worker will be entitled to indemnity benefits. Consult a claims representative for guidance.

Return to Work

At each medical appointment for the work-related injury, the physician will assess the worker's ability to return to work with or without restrictions. Employers are encouraged to provide temporary work accommodations so that injured workers can return to work as quickly as possible.



Indemnity Benefits

If the injured worker is entitled to indemnity benefits, employers are required to provide the worker's wage information to the adjuster for the 26 weeks prior to the accident. The worker's indemnity benefits will be based on those wages. Include extras such as overtime and any non-cash benefits that were part of the wage package, such as living quarters and meals. If the worker has been working for fewer than 26 weeks, provide the wage information for the period of employment.

Temporary Total Disability

Temporary total disability (TTD) benefits are paid to a worker who is temporarily unable to work due to an injury. The temporary total disability amount is also called the *compensation rate* for the worker. The compensation rate is two thirds of the worker's average weekly wage ($66 \frac{2}{3}$), based on gross wages for the 26 weeks before the accident. The compensation rate is subject to a maximum, which is equal to the State Average Weekly Wage as determined annually by the New Mexico Department of Workforce Solutions. Find the wage amounts at the WCA website: www.workerscomp.nm.gov. Temporary total disability benefits are paid only until the worker returns to work at the pre-injury wage, or reaches maximum medical improvement (MMI) as determined by the treating health care provider, whichever comes first. MMI is the point at which further recovery or lasting improvement to an injury is no longer expected by the health care provider.

Temporary Partial Disability

If the employer keeps the worker employed during the temporary disability period, but at a reduced wage or reduced hours, the worker will be entitled to temporary partial disability (TPD) benefits, which are two-thirds of the difference between the worker's regular wage and the reduced wage, up to the maximum compensation rate.

Permanent Partial Disability

Permanent partial disability (PPD) benefits are paid to workers after they have reached MMI. Benefits are based on the worker's disability rate and other factors. Permanent disability is compensated differently depending on the nature of the injury or illness and the body part(s) affected.

Whole Body - Impairment Only

If the worker's injury is to the *body as a whole* (usually an injury to the head, neck, shoulder, back or hip) it is considered a *whole body* injury. The physician assigns a *percentage impairment rating* to the worker, based on an American Medical Association standard called the *AMA Guides to the Evaluation of Permanent Impairment*.

If the worker is back to work and earning at least the pre-injury wage, the worker is entitled to receive permanent partial disability benefits at the compensation rate, multiplied by the impairment rating percentage. For example, a worker has been placed at MMI and has returned to work making as much or more than the pre-injury wage. The pre-injury average weekly wage was \$500, so the compensation rate would be \$333.32, or two-thirds of the weekly wage. That number, multiplied by the impairment rating of 12 percent assigned by the HCP, would qualify the worker to a weekly payment of \$39.99 for the injury.

Whole Body - Impairment with Modifiers

If at the time of MMI the worker has not returned to employment at the pre-injury wage, the worker is entitled to additional PPD benefits. The added benefit is based on a formula that considers the worker's age, education, skill level, training and reduction in physical capacity, as these factors are relevant to the worker's ability to return to the workforce. These factors are commonly called "modifiers."

If the worker's post-MMI wage is less than the pre-injury wage, these modifiers are used to calculate benefits. The PPD rate is calculated using the Workers' Compensation Act statutes (NMSA 1978 § 52-1-26.1-4) and a *Dictionary of Occupational Titles*. For example, a 42-year-old worker with an injury to the right hip is given an impairment rating of 12 percent. The worker receives one (1) modifier point because his age is 42. Since he never completed high school, he receives two (2) points. The worker's specific vocational preparation (SVP) assigned by the *Dictionary of Occupational Titles* is six because he is a gas welder. Workers with an SVP of six receive two (2) modifier points. He needs training for another vocation, so is awarded one (1) point. The worker's modifiers total six (6) points.

Modifiers	Points
Age:	1
Education:	2
SVP:	2
Training:	1

The total of six (6) modifier points is multiplied by the points the worker receives for his residual physical capacity (RPC). RPC is based on a chart set in statute (NMSA 1978 52.1-26.4) which assigns a number based on the difference between the worker's capacity to perform physical work before and after an injury. The worker's physician found the worker's post-injury capacity was less than his usual and customary work, and using the chart, found the worker should be assigned an RPC of three (3). Multiplying the modifiers of 6 with the RPC of 3 provides a total of 18. That number is added to the impairment rating of 12 for a total of 30, which results in the PPD rating of 30 percent. The worker's pre-injury wage was \$500 per week, so the compensation rate would be two-thirds that amount, or \$333.32. Multiplying the compensation rate by 30 percent results in a weekly PPD payment of \$100.

If the total PPD rating is less than 80 percent, the maximum duration of indemnity payments for any whole body injury is 500 weeks, including

TTD and PPD. If the PPD rating is 80 percent or more, benefits are paid for a maximum of 700 weeks.

Scheduled Injury

Benefits for a scheduled injury are paid for the loss of use of specific body parts that include an arm, hand, finger, leg, foot, toe, sight or hearing, and are paid at a percentage of the compensation rate. The percentage is determined by the degree of loss of function caused by the injury or impairment. Loss of use is not necessarily the same as impairment. The number of weeks scheduled benefits are due depends on the body part injured or lost. This is determined by statute (NMSA 1978 § 52-1-43).

Permanent Total Disability

Permanent total disability (PTD) provides lifetime benefits at the compensation rate. To be eligible for permanent total disability benefits, the worker must have suffered a severe disabling brain injury or the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of the listed body parts.

Death or Survivor Benefits

Benefits are paid to the worker's dependents up to the full compensation rate, contingent upon the dependent's relationship to the worker and the number of eligible dependents. The maximum amount due is how much the worker would have received in temporary total disability benefits for 700 weeks. This amount is exclusive of funeral expenses.

Lump-Sum Settlements

The Workers' Compensation Act allows a worker and the employer to resolve a claim for injury in a lump-sum settlement. All parties must be in full agreement, and all settlements must be approved by a workers' compensation judge. Claims settled by mutual agreement avoid the time and cost of litigation. The Workers' Compensation Administration's staff can facilitate discussions on settling a claim.

Enforcement

Enforcing the Mandatory Coverage Requirement

The WCA's Employer Compliance Bureau is charged with investigating employer compliance with the mandatory insurance provisions of the Act (see page 10). The Employer Compliance Bureau works with employers to educate them about the coverage requirements and the benefits of having workers' compensation insurance for their workers and business. When an employer required to have workers' compensation insurance fails to present proof of coverage to the Employer Compliance Bureau, or fails to come into compliance, the investigating compliance officer will refer the employer to the WCA Enforcement Bureau for administrative prosecution.

If an organization is subject to the Act and is not covered, the Enforcement Bureau can seek fines and may seek to shut down the non-compliant business through a temporary restraining order.

If a business without coverage has an injured employee, the employee could sue in district court for negligence. Having workers' compensation insurance ensures any claims made for work injuries are determined in the workers' compensation system.

For questions regarding coverage or to report a business that should have coverage, please contact a WCA employer compliance officer either in Albuquerque or at the nearest regional WCA office.



Enforcement of Fraud, Retaliation and Other Violations

The WCA's Enforcement Bureau investigates and, when necessary, prosecutes administrative and/or criminal violations of the Workers' Compensation Act and Rules. Reported violations include, but are not limited to, fraud, bad faith, unfair claims processing, and late/non-reporting of required claims data. The Enforcement Bureau works with the community to resolve alleged violations to ensure benefits are being paid timely to qualified injured workers while maintaining reasonable costs to employers and taxpayers.

Fraud, Bad Faith and Unfair Claims Processes

Fraud occurs when a party intentionally misrepresents or omits relevant information that affects the determination of benefits. Bad faith is intentional conduct by any person that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of any party. Unfair claims processing is any practice, whether intentional or not, which unreasonably delays or prolongs the payment of benefits at a rate not consistent with the Act. If unfair claims processing or bad faith occur in the handling of a particular claim, the claimant may be awarded a benefit penalty of up to 25 percent of the benefit ordered to be paid. Depending on the egregiousness of the behavior, these allegations can become the basis of a prosecutable criminal case.

Retaliation

Under statute §52-1-28.2, an employer shall not discharge, threaten to discharge or otherwise retaliate in terms or conditions of employment against a worker who seeks workers' compensation benefits, for the sole reason that the employee seeks workers' compensation benefits. This allegation may be raised in a worker's complaint to seek benefits or through the Enforcement Bureau.

Other Technical Violations

Examples (not a comprehensive list) include: failure to post the workers' compensation poster; failure to report workplace injuries to the insurer within 72 hours; failure to complete the proof of safety inspection; failure to comply with the Risk Reduction Program; any party's failure to comply with mediation or adjudication rules; any health care provider's billing misconduct.

Investigative Process

Referral for investigations are made in a report to the WCA Enforcement Bureau. Report forms can be found on the WCA website. An acknowledgment of receipt is sent to the referring party, and often a letter requesting additional information, known as a *Notice of Pending Investigation*. The letter contains information on allegations and what relevant information is sought. Anyone who receives such a letter and is a party subject to the Act is required to provide the requested information by the date specified or face administrative penalties.

When a referral for administrative action is received, a prosecuting attorney evaluates the case. Administrative charges are filed through a *Notice of Administrative Enforcement Proceeding*, and only after the Director has made a finding of probable cause. A hearing is then set to determine if violations have occurred. In some instances, the Enforcement Bureau may pursue criminal prosecution against a wrongdoer.

Dispute Resolution

Dispute Resolution

The WCA has its own administrative court to resolve disputed cases. The court is staffed by administrative law judges, professional mediators, and the official court clerk who keeps records. The WCA's Dispute Resolution Bureau handles all complaints that fall under workers' compensation law.

The WCA's mediation staff generally conducts a mediation conference within 60 days of a complaint being filed. Employer representatives, insurance adjusters and injured workers are normally present in person in order to participate in the negotiations. Using a variety of dispute resolution techniques, the mediator tries to bring the parties to a mutually agreeable resolution of their differences. After the mediation conference, the mediator writes a recommended resolution.

Each party has 30 days from the receipt of a recommended resolution to reply with either an acceptance or a rejection. A party who fails to reply is considered to have accepted the resolution.

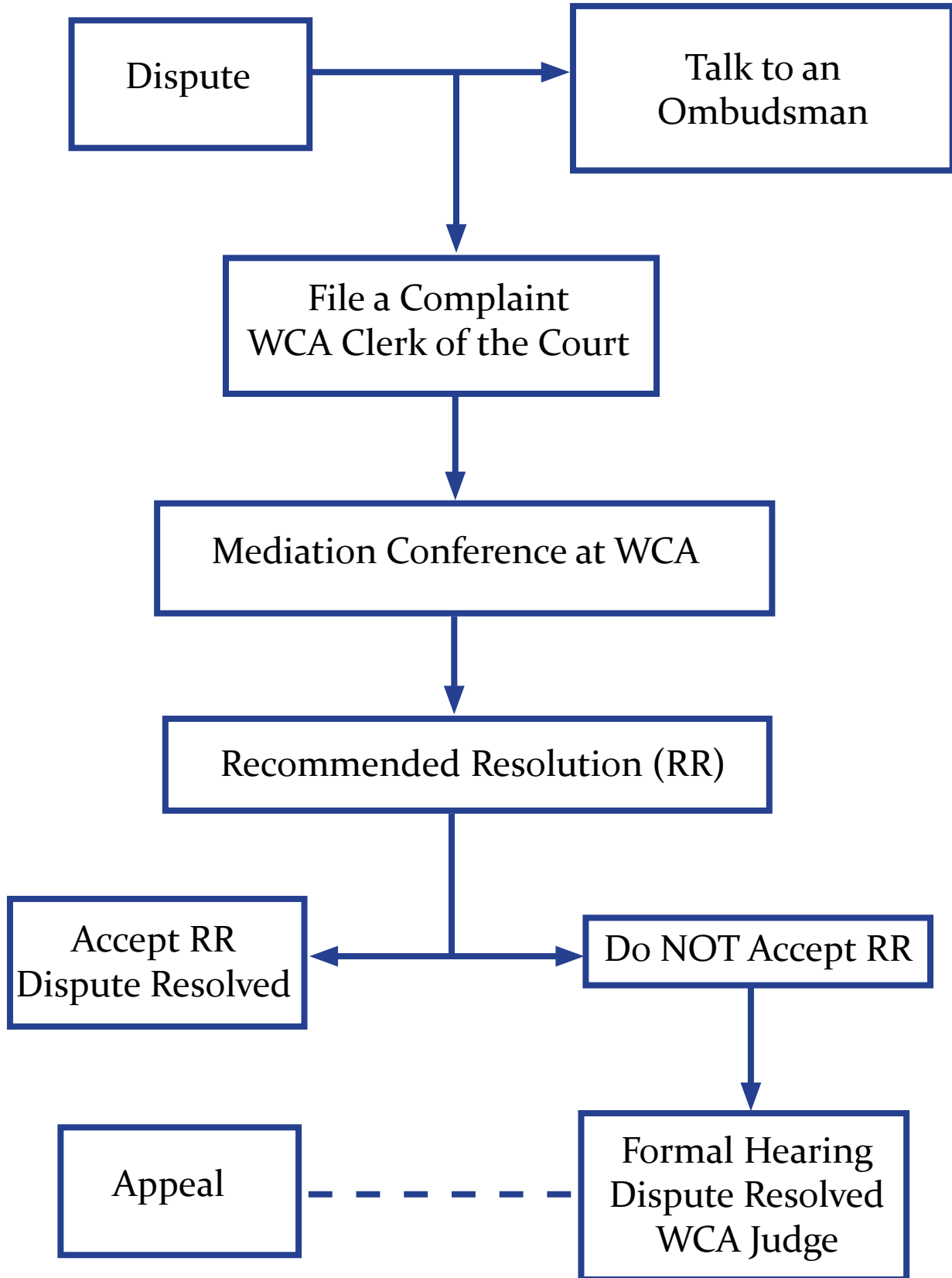
The resolution becomes binding unless rejected by one party. If rejected, the matter is assigned to a judge who may conduct a trial to resolve the dispute.

Other matters such as health care provider disputes, independent medical examination requests, petitions for approval of lump sum settlements and requests for attorneys' fees are also assigned to workers' compensation judges for a hearing.



A Workers' Compensation Administration Courtroom

Workers' Compensation Dispute Resolution



Using an Attorney

There are times when a dispute cannot be resolved with the help of an ombudsman or through mediation or settlement. At that time, you may want to consider hiring an attorney. If insured, your carrier will provide an attorney. If not insured, you can represent yourself or retain an attorney.

An attorney can be hired at any point during the claim process to represent your interests.

The WCA does not provide attorney representation or make recommendations for specific attorneys. To find an attorney who specializes in workers' compensation, search the Internet or contact the State Bar of New Mexico at www.nmbar.org.

The law limits the amount of attorney fees that can be paid in workers' compensation cases. The maximum amount that can be paid for each claim to the attorney for each side is set by statute. This cap can be increased if parties are found to be acting in bad faith.

In most cases, half of the worker's attorney's fee is paid by the worker and half by the insurer. Fees for the worker's attorney must be approved by a workers' compensation judge.



Glossary

Adjuster

A person licensed by the New Mexico Office of the Superintendent of Insurance to adjust claims while working for an insurance company, a self-insurance program, or a third party administrator. An adjuster makes decisions about benefit payments and authorizes medical treatment. Also known as a claims representative.

AMA Guides to the Evaluation of Permanent Impairment (AMA Guides)

A book published by the American Medical Association for health care providers, describing how to rate the impairments of injured workers. The *AMA Guides* is the official standard for the impairment ratings for workers' compensation injuries in New Mexico.

Average Weekly Wage (AWW)

The weekly wage a worker earned before the injury or illness occurred, which includes wages for all jobs worked 26 weeks before the injury, even those earned with a second job. It is an average of wages used to determine the compensation rate. The AWW may include some forms of non-monetary compensation, such as the value of living quarters, if this is part of payment for the job.

Bad Faith

Unreasonable, intentional or malicious denial or refusal to pay a claim without any reasonable basis. Also, intentional conduct in the handling of a claim by any person, including the worker, that amounts to fraud, malice, oppression or willful or reckless disregard of the rights of any party.

Benefit

Any payment to an injured worker, or on behalf of an injured or deceased worker, for compensation, medical treatment, legal expenses, funeral or travel costs resulting from a work-related injury, illness or death.

Burden of Proof

In legal disputes, the necessity of proving a fact or facts on an issue raised between parties.

Claim

A legal demand from the worker to the employer for workers' compensation benefits.

Compensable

A loss or hardship for which compensation is due. A claim for workers' compensation can be compensated if a worker sustains an injury or illness during the course of employment and the disability is a natural and direct result of the accident.

Compensation Rate

See Temporary Total Disability benefits.

Complaint

A legal document filed in a workers' compensation case to initiate the review of a dispute.

Dependents

Children or other family members who qualify to receive workers' compensation benefits in the case of a worker's death.

Dictionary of Occupational Titles (DOT)

A publication containing job titles and descriptions which is used in calculating the PPD rating and sets forth the physical abilities required to perform a job and the time and repetitiveness of a job's physical actions.

Disability Rating

A percentage value determined by calculating an injured worker's impairment as modified by the worker's age, education and physical capacity. A disability rating is used to determine benefits for an injured worker with a permanent disability.

Employer's First Report of Injury (FROI)

The form that an insurer or self-insurance program is required to file electronically with the WCA to provide a record of a workers' compensation claim. The employer or insurer is required to provide the worker with a copy of the FROI.

Exclusive Remedy

A legal term that means workers injured on the job are not allowed to sue their employers in the regular court system when their injury is covered by the workers' compensation system.

Ex Parte Communication

Improper contact with the judge or HCP to a case without presence or knowledge of other parties involved.

Executive Employee

The chairman of the board, president, vice-president, secretary, treasurer or other executive officer who owns 10 percent or more of the outstanding stock of the professional business or corporation, or a 10 percent ownership interest in the limited liability company.

Form Letter to Health Care Provider

A letter containing questions to be answered by the HCP in a disputed case. The Form Letter to Health Care Provider is provided to the complaining party by the WCA either online or via the WCA Court Clerk. The form letter should be completed and brought to the mediation conference by the worker. A copy should also be sent to the insurer or TPA.

Health Care Provider (HCP)

A person or organization that provides health care services. By law, the health care provider may be any person licensed in New Mexico in one of these professions: medical doctors, optometrists, chiropractors, dentists, podiatrists, osteopathic physicians, physician assistants, certified nurse practitioners, physical therapists, occupational therapists, acupuncture

practitioners, psychologists, athletic trainers and certified nurse-midwives.

Hearing

A courtroom proceeding where both sides involved in a workers' compensation dispute present their cases to a workers' compensation judge for resolution. This may include a trial.

Impairment Rating

Describes the degree of permanent damage to the body as a whole. This rating can only be given by the treating health care provider or independent medical examiner and must be based on a reference book called the *AMA Guides*.

Indemnity Payment

A payment to the injured or ill worker or dependents to compensate for wage loss, permanent impairment, or death. This may also be known as compensation benefits.

Independent Medical Examination (IME)

When parties dispute a workers' medical treatment, either party may petition a workers' compensation judge for the worker to be examined by a physician who has not previously treated the worker. The judge then considers the opinion of that examination determining the case. IME providers must be approved by a committee appointed by the WCA Advisory Council.

Loss of Use

Loss of or decrease of function of a specific body part in a work-related accident. This could include total amputation of a specific body part or a lower degree of loss (§52-1-43).

Lump-Sum Payment

A single workers' compensation payment, usually in place of the recurring medical or indemnity payments that would otherwise be received over a period of time. Lump-sum payments must be approved by a workers' compensation judge.

Maximum Medical Improvement (MMI)

The date after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated as a result of further medical treatment, based upon reasonable medical probability as determined by a health care provider.

Medical Benefits

Payment by the insurer to a health care provider for an injured worker's medical care.

Mediation

An informal meeting involving both sides of a workers' compensation dispute with a WCA mediator who helps to resolve the dispute.

Mediator

A dispute resolution specialist from the WCA who meets with the disputing parties, out of court, to try to reach an agreement.

Mental Impairment

A permanent mental illness that is the result of a workplace accident or injury. The impairment can be primary or secondary (§52-1-24 (B)(C)).

Mileage Reimbursement

A monetary payment for every mile approved for travel to get to medical treatment that is required by the workers' compensation claim, paid only if the worker has to travel 15 miles or more each way.

Modified Work

A change to normal work duties that allows an injured worker to return to employment.

Modifier Formula

Once at maximum medical improvement, a modifier formula may be used to calculate in specific indemnity cases where the worker is unable to return to work, or has returned to work but earns less than the pre-injury wage. Modifiers may result in additional benefits.

Statute specifies the modifier points to be assigned, based on factors such as age, education, job skills and physical capacity.

No Fault

A concept in the law that says the claim will generally be covered no matter who caused the accident.

Notice of Accident (NOA) and NOA Form

A formal notification from worker to employer to notify there has been a work-related accident. This can be done through a written statement. Employers are required to post the WCA Notice of Accident forms for their employees to use. An adequate supply of WCA NOA forms must be kept attached to the mandatory WCA Poster (see page 27).

Occupational Disease

A disease that is caused or partly caused by the specific job a worker performs.

Occupational Injury

An injury that happens on the job.

Ombudsman

Specialists who investigate and attempt to fairly resolve disputes, problems and concerns. They provide information on workers' compensation for all parties at no charge. They do not provide legal advice.

Party

Typically, the worker or the employer and insurer or self-insurance program. Parties may also include HCPs, the Uninsured Employers' Fund, or the estate of a deceased worker.

Per Diem

An amount of money to cover daily cost of living when the worker is away from home for medical treatment related to the injury.

Permanent Partial Disability (PPD)

Permanent partial disability (PPD) benefits are paid to workers after they have reached maximum medical improvement (MMI). Benefits are based on the worker's disability rate and other factors. Permanent disability is compensated differently depending on the nature of the injury and the body part(s) affected. See modifier formula on page 37 for additional information.

Permanent Total Disability (PTD)

A category of indemnity benefit payable when a worker has been left with the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of them, or a disabling brain injury.

Pre-existing Condition

A physical condition or illness that the worker had before the work-related accident.

Pro Se

When people represent themselves in a legal proceeding without any representation from a lawyer.

Recommended Resolution

A written evaluation by a mediator on how best to resolve a formal complaint. Parties can decide to accept or reject the recommended resolution.

Residual Physical Capacity (RPC)

A rating given to an injured worker's ability to perform physical tasks after an injury compared to before the injury (§ 52-1-26.4).

Retaliation

Any adverse action an employer takes against workers because they reported a workplace injury or illness. Adverse actions can include termination, giving negative evaluations, disciplining or demoting, reassigning, or reducing pay.

Rules

Laws instituted by administrative agencies such as the Workers' Compensation Administration, usually clarifying statutory language or defining internal processes and procedures. The New Mexico WCA director is authorized by Section § 52-5-4 NMSA 1978 to adopt reasonable rules and regulations in order to implement the legislative purposes of the Workers' Compensation Act.

Scheduled Injury

An injury to a specific body part listed in a schedule in the statute (§ 52-1-43). Benefits for scheduled injuries are based on loss of use rather than the permanent partial disability benefit formula and are paid for a specific number of weeks, depending on the affected body part.

Sole Proprietor

A single individual who owns all the assets of a business, is solely liable for its debts and employs in the business no person other than him/herself.

Specific Vocational Preparation (SVP)

A component of the modifier formula, used to determine how much time and training is needed for a disabled worker to prepare for another job. Vocational preparation training can include education, apprenticeship, job training and essential experience in other jobs.

Statute

A written law passed by a legislative body. Laws pertaining to New Mexico workers' compensation can be found in Chapter 52 of the New Mexico Statutes Annotated (NMSA).

Temporary Partial Disability (TPD)

Indemnity payments made to workers who remain employed but at a reduced wage or with reduced hours during the period of temporary disability. Payments are calculated using a set formula.

Temporary Total Disability (TTD)

Indemnity payments made to workers based on their inability to perform duties by reason of accidental injury arising out of and in the course of employment, up to the date of maximum medical improvement. The temporary total disability amount is also known as the compensation rate for the worker (see page 37).

Third Party Administrator (TPA)

A representative hired by an insurance company or self-insurance program to handle workers' compensation claims.

Tort Liability

In a civil lawsuit for damages, being responsible for damages caused by wrongful conduct or omission.

Whole Body Injury

All other injuries not listed in the scheduled injuries statute, commonly to the back, shoulders and hips.

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(near Yale and Gibson)

In-state toll free:

1-800-255-7965

(505) 841-6000

Fax Clerk of the Court: (505) 841-6060



Regional Offices

Call the nearest regional office to reach the Ombudsman and Safety programs, and for forms and publications.

FARMINGTON:

2700 Farmington Avenue, Bldg. E, Ste. 2

Farmington, NM 87401

1-800-568-7310

(505) 599-9746 Fax: (505) 599-9753

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32 NM 65

Las Vegas, NM 87701

1-800-281-7889

(505) 454-9251 Fax: 454-9248

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2120 North Alto, Unit 3

Hobbs, NM 88240

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400 N. Pennsylvania Ave., Ste. 425

Roswell, NM 88201

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(575) 623-3997 Fax: (575) 623-0078

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