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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will conduct a virtual meeting at 2 p.m., Wednesday, May 5, 2021. Link to access the meeting will be posted on the WCA website on the day of the meeting.

HOLIDAY CLOSURE

The Workers' Compensation offices in Albuquerque and all its field offices will be closed on the following upcoming holidays:

Memorial Day, Monday, May 31

Fourth of July, Monday, July 5

New Mexico 2020 Workplace Deaths

By Aileen O'Catherine and Ruili Yan

The Workers' Compensation Administration (WCA) honors New Mexico workers who lost their lives the previous year as the result of a workplace accident or injury by remembering them in its spring Bulletin, which coincides with Workers' Memorial Day on April 28. The day was established to recognize workers who died and to serve as a reminder of the importance of workplace safety. In 2020, there were 34 work-related deaths reported to the agency, a drop from the 43 reported in 2019. There were 38 workplace deaths reported in 2018.

In 2020, New Mexico recorded its first workplace deaths resulting from COVID-19. There were nine deaths caused by this disease, to make up 26% of the year's workplace fatalities. While six of the nine workers were employed in the health care field and considered essential workers, three did not fit that profile. One was a general maintenance worker, one a receptionist and one a salesperson at a home improvement store. The health care workers were personal caregivers, a phlebotomist, and a registered nurse. The youngest was 35 and the oldest 71. Five were female and four were male. One, a medical aide from Farmington, was written about in a news report in an international newspaper, *The Guardian*, which wrote an article on health care workers in the U.S. who had died of the disease. This caregiver was 56, and was a wife, mother and grandmother.

Most years, motor vehicle accidents are the leading cause of death. In 2020, 24% of workplace deaths were attributed to motor vehicles, for a total of eight deaths. This cause of death has historically been a leading cause of workplace injuries in New Mexico and nationwide. While the majority of the motor

vehicle accidents were the result of a vehicle crash, one resulted from a truck explosion and one worker was struck by a motor vehicle.

In 2016, the New Mexico Supreme Court ruled that excluding farm and ranch workers from workers' compensation coverage was unconstitutional. Fatality statistics for 2020 point to the importance of insurance coverage for these workers. Farm and ranch work involves working with machinery. These deaths included fatal injuries as a result of an exploding valve, being crushed by a truck, and by crashing a tractor. One laborer fainted and died. One was fatally attacked by a bull when attempting to slaughter a cow.

Two workers died from gunshots in 2020. One, a first responder, was a state police officer killed after stopping a suspect. One worker was shot during a disturbance at his place of work. Two workers died of electrocution. Three workers were crushed; one under materials he was unloading when they fell on him, another under a concrete barrier, and another by a trailer. One worker fell from a great height.

Taking safety seriously is the best way for workers to remain safe, and for employers to keep workers' compensation insurance costs down. However, even with safety programs in place, accidents can still occur. Workplace deaths, while statistically low, have a huge impact on the workplace, and on the families and loved ones of those who have died. The selected date to honor these workers was chosen as it commemorates the establishment of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) beginning in 1971. OSHA plays an important role in workplace safety, and issues citations to employers for safety violations.

NMWCA Enforcement Bureau Puts Emphasis on Fine Collections

By Aaron Miera

The WCA's Enforcement Bureau, formerly known as the Safety and Fraud Division, is tasked with helping to maintain the integrity of the New Mexico Workers' Compensation system. While the staff has changed over the years, the overall mission of the Enforcement Bureau has not. While these cases remain a priority, the bureau continues to move forward with various efforts to become more efficient and effective with our available resources. One of the topics of emphasis has been on fine collections.

The Enforcement Bureau has been successful in identifying, investigating and prosecuting individuals and businesses in violation of the New Mexico Workers' Compensation Act. However, collecting the assessed penalties has proved more challenging. Previous efforts by the Enforcement Bureau to collect penalty monies owed

the agency were largely focused on violators who provided payment of their own volition. This did not prove to be very successful. The Enforcement Bureau realizes the importance of holding individuals and businesses accountable for their actions.

To that end, the Enforcement Bureau is now taking a more aggressive, case-specific approach to collecting fine money owed the agency. While the penalty collection process continues to adapt as necessary, early efforts have proven to be successful. The use of bureau-initiated stipulations has been a helpful tool used to efficiently resolve cases without having to fully litigate an enforcement action in a Director's Hearing.

The Enforcement Bureau recognizes the hardships that the COVID-19 pandemic has caused upon commerce and has been willing to work with

businesses on fulfilling their penalty obligations without subjecting them to additional hardships. The importance of strong working relationships between the stakeholders involved in the New Mexico workers' compensation system remains vital to the overall success of the WCA and the Enforcement Bureau. The money collected from these fines ultimately makes its way back to the State of New Mexico's general fund, which financially supports state government among other things.

As the New Mexico Workers' Compensation Administration moves forward and evolves with the times, the Enforcement Bureau will continue to provide efficient and effective services while working to advance the agency's mission of assuring timely benefits to injured workers at a reasonable cost to employers.

Aaron Miera is an investigator with the WCA Enforcement Bureau.

New Mexico 2021 Legislative Wrapup

The New Mexico Legislative session ran from January 19 to March 20 in 2021. During the

NM Workers' Comp. Adm. Quarterly Bulletin

Loretta Lopez, Director
Diana Sandoval-Tapia, Public Information Officer
Aileen O'Catherine, Public Relations Specialist

The Bulletin is electronically published in January, April, July and October by the Public Information Office of the New Mexico Workers' Compensation Administration. The Bulletin is available free of charge. Send changes of e-mail address and requests to receive the Bulletin to Diana Sandoval-Tapia in the Public Information Office, New Workers' Compensation Administration, WCA-PIO@state.nm.us.

Suggestions for articles are welcome. Call Diana Sandoval-Tapia at (505) 841-6052.

Recent issues of the Quarterly Bulletin can be viewed on the Internet at <https://workerscomp>.

session, several bills related to workers' compensation were introduced that did not pass. House Bill 268 *Coronavirus and Workers' Comp* (HB 268) would have amended Section 52-1-19 NMSA 1978 of the Workers' Compensation Act to create the rebuttable presumption that COVID-19 is an injury arising out of and in the course of employment for essential employees, provided the employee could establish that the employer had not strictly complied with existing public health orders.

The bill defined essential employees as first responders, medical personnel,

teachers, construction trade workers, other employees who work at care centers for COVID-19 and others whose work brings them into repeated and direct personal contact with those diagnosed with the disease. The employee would have been required to work at the physical location of employment at any time up to 14 days prior to diagnosis of the coronavirus disease. Employers would have been given the option to rebut the presumption. HB 268 passed the House on a 38-27 vote, but died in the Senate Judiciary Committee.

What is the Advisory Council?

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers' compensation system in New Mexico. The Advisory Council is required to meet at least twice annually. Scheduled meetings of the Council are announced on the WCA website, <https://www.workerscomp.nm.gov/Advisory-Council>.

Michael Holt Named WCA General Counsel

On February 22, 2021, Michael Holt was appointed General Counsel by Governor Michelle Lujan Grisham. Since September 2020, Holt has been with the WCA as Enforcement Bureau Chief. Prior to coming to New Mexico, Holt worked in private practice as a workers' compensation attorney for 22 years and has been an attorney for 30 years. His knowledge and experience in workers' compensation will greatly benefit the Office of General Counsel. Holt is excited to make a difference. "The WCA has many great employees who work hard every day to accomplish the

agency's mission and objectives," Holt said. He added that he is "humbled and honored to have been appointed as General Counsel."

Director Loretta Lopez said she was "happy to have Michael take on this leadership role and I believe that he will be a real asset to the administration. As General Counsel, he will continue to oversee the Enforcement Bureau and under his management his ideas for the Enforcement Bureau can continue to develop." Holt can be contacted on his work cell phone at (505) 569-9915. The Office of General Counsel is responsible for the agency's legal issues.



Michael Holt

Gayle Osburn Named Employee of the Quarter

By Aileen O'Catherine

Database Administrator Gayle Osburn has been named the WCA Employee of the Quarter for the first quarter of 2021. The quarterly award recognizes agency employees who exemplify excellence in the workplace. Osburn, who has been with the WCA since October 2019, is in the Management Information Systems Bureau and was nominated by Brenda Henderson, her bureau chief.

When the bureau was shorthanded for application developers, "Gayle took the initiative to assist," said Henderson. "She stepped up and made successful changes to the dispute

resolution calendar." When a new mediator position needed to be added to the calendar, Osburn figured out how to code the new section. Osburn has also made minor changes to other applications and is working on an application for the Enforcement Bureau. Henderson said Osburn has a great attitude and works well with everyone on the bureau team. "Gayle is always willing to assist with the help desk and does this while completing her normal assigned task projects," Henderson said. "Plus she has a great sense of humor."

Osburn sees her role as part of a team effort. "Our team has really banded



Gayle Osburn

together during the pandemic to move everything online with us all wearing many hats," Osburn said. "It has been a challenge and a learning curve, but working together, we are making it."

Miriam Sutherland Joins WCA Mediation Bureau

By Aileen O’Catherine

Miriam Sutherland started as a mediator with the WCA on February 22, and finds the process of dispute resolution a good fit for her inclinations. “I’m a helper,” she said. “I enjoy helping people who have fallen on bad times.” Having co-mediated claims since starting, Sutherland looks forward to helping the agency clear out any backlog of claims. She has been impressed with the way the WCA has continued to mediate claims during COVID. “It’s done a good job of getting people to resolution,” she said. “It’s impressive.”

Sutherland grew up in Stony Brook, N.Y., and attended Wellesley College near Boston, where she obtained her

undergraduate degree. She earned her law degree at American University in Washington, D.C. She came to New Mexico in 2007 to be closer to her extended family, having visited during vacations and as a textile artist. “I was a lawyer, but I was also an artist,” she said, “but I hung up the loom and went back to practicing law.”

Sutherland served as an administrative law judge at the New Mexico Department of Workforce Solutions and worked with her husband at his private firm, where she litigated family and probate cases. Having practiced in several areas of law, she finds public service to be more gratifying. In addition to helping litigants come to solutions, Sutherland



Miriam Sutherland

enjoys helping her 5-year-old son whip up batches of slime, for which there are many recipes. “2020 was the year of slime,” she laughed. “We’re both interested in art and science.” Sutherland paints, does collage, and loves to cook, especially with her son, and not always with slime.

Alex Ospino Joins WCA as Mediator

By Aileen O’Catherine

Alex Ospino has learned firsthand about the art of adaptation and compromise. Part of an Air Force family, he was born in Michigan and lived in North Dakota and Florida before coming to New Mexico at the age of 10. Ospino joined the Marines after high school, and while he was injured during basic training, he graduated without delay. However, the injury eventually prevented Ospino from finishing his stint in the service. The Marines provided him with vocational rehabilitation, so Ospino chose to go back to college. When he found that vocational rehab didn’t offer his preferred major of history, he chose political science instead, with the hope it would help him into law school someday. That someday came after Ospino earned his degree in political science from the University of New Mexico (UNM) in 2014. He went on to graduate magna cum laude from UNM

Law School in 2017.

After joining a private civil defense practice after graduation, he represented a range of clients, to include undocumented immigrants and corporations. An overarching goal was to be as fair as possible. Although he found private practice to be rewarding and worked hard to be fair, he sometimes felt like the bad guy in litigation. The hectic pace had him look for a more regular schedule and more free time for activities and family. The WCA’s mediation bureau turned out to be a perfect fit. “It’s nice to be the good guy, to help facilitate some of the settlements,” Ospino said about his new role, which began February 22. “The bureau and the judges have also done a good job of providing new mediators with a learning baseline. I really look forward to helping out both workers and employers.” He also admires how bureau staff mediate the vast majority of



Alex Ospino

cases that come to the agency, negating the need for cases to go before a judge. He looks forward to working with everyone in the workers’ compensation community, especially post-COVID.

Ospino and his wife live on five acres in Tijeras, where he enjoys the quiet of the mountains. He enjoys hiking, skiing, backpacking trips, and playing pickleball with his Dad in his spare time, but he won’t have that for much longer. He and his wife are expecting their first child in June—a girl—not that he had his heart set on one outcome or the other.

New Mexico's Place in Oregon Premium Rate Ranking

By Aileen O’Catherine

In the complex field of workers’ compensation insurance, where individual states have their own unique systems, it is vitally important for those in the field of workers’ compensation to know how their state’s workers’ compensation system compares with the systems of other states. The Oregon Department of Consumer and Business Services publishes a study in even-numbered years that analyzes the premium rate rankings of all 50 states and the District of Columbia. Historically, states rely on the Oregon biennial report to determine how their workers’ compensation costs compare to other jurisdictions. According to the 2020 study, New Mexico’s workers’ compensation premium rate ranking declined from its rate ranking in 2018. The 2020 study ranks New Mexico at 29th, meaning 21 states and the District of Columbia have lower rates. New Mexico’s current rank is slightly less favorable than its ranking of 34th in the 2018 study, which documented New Mexico’s best performance in several years. Less expensive states rank numerically higher, and costlier states

rank numerically lower.

Ranked at 29th, New Mexico has a workers’ compensation premium rate that is lower than the national median. Regional state rankings in comparison rank Arizona at 43rd and Colorado at 33rd. In 2018, Arizona ranked 40th and Colorado ranked 35th. The 2020 study ranked New Jersey at 1st with the most expensive rates, followed by New York at 2nd. The most affordable rates were in North Dakota, which ranked 51st, followed by Arkansas, ranked at 50th.

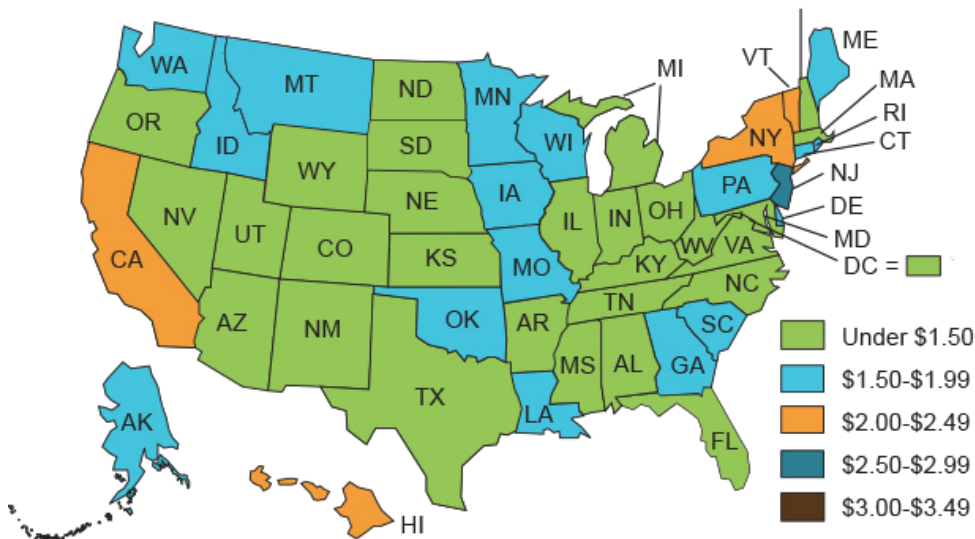
Premium rate indices are calculated based on data from 51 jurisdictions, for rates in effect as of Jan. 1, 2020. The 2020 median value is \$1.44, which is a drop of 15.3% from the \$1.70 median value of the 2018 study. This is the largest drop in the study median since 2000. New Mexico’s index value is \$1.34 (93% of the 2020 median). This compares to New Mexico’s 2018 index value of \$1.50, which was higher overall, but represented only 88% of the national median index.

Even though New Mexico’s index value decreased, other states decreased more, leading to our change in ranking from 34th to 29th. In comparison, New

Jersey’s index rate for 2020 was \$2.52 and its percent of study median was 175%. North Dakota’s index rate for 2020 was 0.67 and its percent of study median was 47%.

Every state’s economy is different, with different industries, occupations and occupational hazards that factor into its ranking. The study aims to factor out those differences by using a comparable mix of risk classifications for each state. Consistent mixes of 50 major risk classifications are used for all states to create the index rate. Factors used apply to a state as a whole, rather than individual characteristics of different employers. Self-insurers are not included in the study because states regulate them differently, and because self-insurers don’t pay premiums, so their costs are not consistently reported. The study compares average manual rates, rates for expected claim costs, plus factors for insurer expense and profit.

2020 Workers’ compensation premium index



Source: Oregon Dept. of Consumer and Business Services

New Mexico COVID-19 Workplace Data Update

By Aileen O’Catherine and Ruili Yan

Data extracted from the WCA database on April 5, 2021 provide insight into COVID-19’s impact on the workplace in New Mexico over the course of a year. There have been 3,526 First Reports of Injury (FROIs) filed with the WCA that were coded to indicate COVID-19.

Of the total 3,526 submitted claims for COVID-19 in the workplace, 2,379 were for females (67.5%), and 1,110 (31.5%) were for males. Thirty-seven, or 1.0%, were undeclared for the gender category.

There were 958 Subsequent Reports of Injury (SROIs) filed which listed coronavirus as the cause of illness. The filing of a SROI indicates that either a medical or indemnity payment has been made by the insurer. Of the 958 SROIs, 888 were indemnity claims.

The WCA received its first pandemic-related SROIs in April, 2020, with the highest number submitted in November and December 2020, followed by January 2021. December had the largest number of SROIs filed,

189, of which 185 were indemnity claims. It is possible that some non-indemnity claims may become indemnity claims in the future.

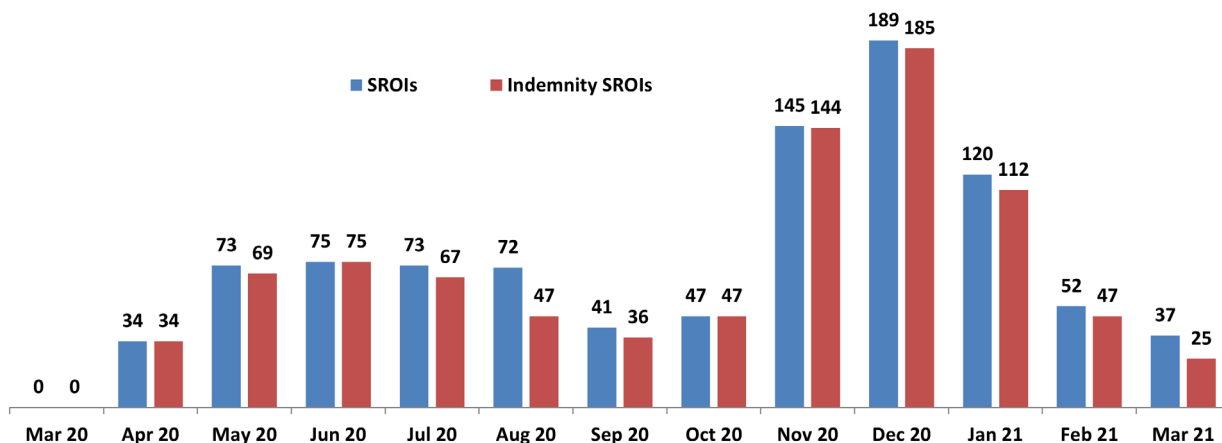
Data coded for field of industry indicates the largest percentage of indemnity claims for the pandemic occurred in the field titled Health Care & Social Assistance (81.5%). This was followed by Administrative & Support & Waste Management & Remediation Services (12.0%). Occupations most affected by the coronavirus in the workplace fell into the category of Health care Practitioner & Technical Occupations (42.8%), followed by Health Care Support Occupations (25.6%). Not all affected occupations were health-related, albeit their numbers are smaller. For example, Protective Service Occupations made up 8.4% of this pool of claims, and Office and Administrative Support occupations made up 5.2%.

Ten COVID-related worker deaths had been reported to the WCA at the time the data was drawn. They occurred

from March 2020 through February 2021. The highest incidence of fatality was during the month of November 2020, when there were three deaths. There were two deaths in April and two in May 2020. One death occurred in the months of March and December, and again in February 2021.

The data does not provide a comprehensive picture of the COVID-19 virus’ impact on New Mexico workers. There may be some workers whose illness goes unreported at the WCA if workers receive time off with sick pay to cover for the loss of work time. Other employers may opt not to enter a claim because a worker is not in the health care field. However, the data provided to the WCA does provide a clear picture to be drawn on the data available. The WCA plans to continue to study information and trends, and updates will be made available as more information is gathered. Look for more information in our 2021 Annual Report when it publishes later in the year.

SROIs (E6) Filed/Received by Month



NMWCA Launches Ergonomics Resources Webpage

By Aileen O’Catherine

When the COVID-19 pandemic hit, teleworking became a vital way for work to continue. The New Mexico Workers’ Compensation Administration (WCA) saw an opportunity to provide its employees with ergonomics resources so they could work from home as safely as possible. The compiled information was launched via the agency website so agency employees as well as employers and workers could search for information that was helpful to them in navigating the new work norm.

Ergonomics is the science of human engineering and helps prevent musculoskeletal disorders that arise from an improper fit between the way work is performed, the tools used to perform the work, or the work environment itself.

The ergonomics web page provides information compiled from OSHA, the NIH and other ergonomics experts. WCA Safety Bureau Chief Paul

Martinez compiled the information into downloadable documents, as well as creating a PowerPoint presentation that employers can use to train their workers. The presentation targets those tasked with setting up desks and workstations in home environments that do not mirror the work environment.

“This web page is a one-stop resource for state employees and those adapting to working from home,” said WCA Director Loretta Lopez. “Our hope is that the information is helpful and can assist employees in avoiding injury.”

For WCA Safety Bureau Chief Paul Martinez, the issue boiled down to safety.

“It’s important to us as a workers’ compensation agency to ensure workers minimize safety risks,” Martinez said. “We wanted to provide resources that help those working from home avoid injuries.”

Resources include a self-assessment checklist that assists workers in



Home-based workstations can vary from desks to kitchen countertops

configuring their home workspace to its optimal configuration. There are safety tips, an introduction to ergonomics, and resources specific to home workspaces that can range from desktops to kitchen counters to sofas. Resources from OSHA include sitting and standing postures that illustrate how to reduce physical stress.

By making the resources readily available on the agency website, they are available to anyone at any time. The web page launched February 5, 2021.

<https://workerscomp.nm.gov/Ergonomics>

New Mexico Workers’ Compensation Administration Offices:

MAIN OFFICE

Location & Main Mail Address:

2410 Centre Ave. SE
Albuquerque, NM 87106-4190

Alternate Mailing Address:

PO Box 27198
Albuquerque, NM 87125-7198

Phone Numbers:

Phone: (505) 841-6000
In state toll-free phone:
1-800-255-7965
Fax Clerk of the Court:
(505) 841-6060
Director’s Fax: (505) 841-6009

Regional Offices

Farmington:

2700 Farmington Ave., Bldg.
E, Ste.2
Farmington, NM 87401
Phone: (505) 599-9746
In state toll-free phone:
1-800-568-7310
Fax: (505) 599-9753

Hobbs:

James M. Murray Building
2120 North Alto, Unit 3
Hobbs, NM 88240
Phone: (575) 397-3425
In state toll-free phone:
1-800-934-2450

Las Cruces:

2407 W. Picacho, Ste. D
Las Cruces, NM 88007
Phone: (575) 524-6246
In state toll-free phone:
1-800-870-6826
Fax: (575) 524-6249

Las Vegas:

32 NM 65
Las Vegas, NM 87701
Phone: (505) 454-9251
In state toll-free phone:
1-800-281-7889
Fax: (505) 454-9248

Roswell:

Penn Plaza Building
400 N. Pennsylvania Ave., Ste. 425
Roswell, NM 88201
Phone: (575) 623-3781
In state toll-free phone:
1-866-311-8587
Fax: (575) 623-0078

Santa Fe:

Aspen Plaza
1596 Pacheco, St. #202
Santa Fe, NM 87505
Phone: (505) 476-7381
Fax: (505) 476-7390

WCA Helpline-Hotline: (toll free in New Mexico)

1-866-WORKOMP 1-866-967-5667

WCA Website:

<https://workerscomp.nm.gov>