Senate Bill 155, "Workers’ Compensation Benefit Clarification"

SB 155 amends the Workers' Compensation Act to re-establish return-to-work incentives and clarify benefit entitlement.

WHAT IS AT ISSUE?

Clarification is needed since the 2014 N.M. Court of Appeals case of *Hawkins v. McDonalds.* Specifically, two questions remain since the case: Should a worker continue to receive indemnity benefits, if: (1) the return-to-work-eligible employee rejects an offer of employment at or above the pre-injury wage; or (2) the employee is terminated for engaging in misconduct unrelated to the work-related injury?

HOW WOULD WORKERS BE PROTECTED FROM EMPLOYER BAD FAITH?

- Termination must be unrelated to the work-related injury.
- Termination cannot be in retaliation against the worker for receiving benefits under a work comp claim.
- Termination cannot be made to avoid the payment of benefits to the worker.
- Continue to have protections under other laws for wrongful termination.

THE SOLUTION OF SENATE BILL 155

- Encourages workers to return to work and to maximize medical rehabilitation outcomes.
- Restores financial incentives for employers to offer return-to-work options to remain productive and control work comp premium costs.
- Assures the integrity of the overall workers' compensation system in the interests of all employers and workers.
- Prevents unscrupulous workers from continuing to receive indemnity payments when terminated for misconduct unrelated to the work-related injury, deterring fraud, waste and abuse.
- Cleans up statutory language to ensure the quick and efficient delivery of benefits to injured workers at a fair cost to employers.
- Clarifies that a worker's failure to return to work or misconduct is a voluntary behavior that has consequences and not a right to free indemnity benefits.
- The majority of states terminate indemnity benefits for a worker’s failure to return to work or being terminated for misconduct unrelated to the work-related injury.

BOTTOM LINE: WHY IS CLARIFYING RETURN-TO-WORK SO IMPORTANT?

It’s the Right Thing for Workers, Employers, the Workers’ Comp System and the Economy

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1 2014-NMCA-048; see also *Jaramillo v. State Dept. of Corr.*, 2016-NMCA-072 (sexual harassment).