New Mexico Workers’ Compensation Administration

Guidebook for Employers in New Mexico

A Guide to Your Rights and Responsibilities
Under the New Mexico Workers’ Compensation Law
2016 Edition

This book is based upon the law and rules in effect in 2016. Laws and rules can change by acts of the Legislature, rulemaking 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
PO Box 27198
Albuquerque, NM 87125-7198
1-866-WORKOMP
(1-866-967-5667)

Cover Photo Credit: Illustration of WCA Main Office by Dekker/Perich/Sabatini Architecture. Back cover photo of WCA by Aileen O’Catherine, workplace photos by WCA staff. Taos Pueblo photo on p. 12 by Mike Stauffer, NM Department of Tourism. Photo on p. 34, New Mexico Department of Tourism. Worksite photos by WCA staff.
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. It focuses on issues such as coverage, costs, worker benefits, regulations and claims processing.

In addition to the Guidebook for Employers, the WCA has publications on its website that go into detail on a variety of workers’ compensation topics.

The WCA also provides seminars and outreach on the topic of workers’ compensation.

Another good resource for the topic of workers’ compensation in New Mexico is the Workers’ Compensation Association of New Mexico, http://wcaofnm.com/. 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.
New Mexico became a state in 1912, and its workers’ compensation law went into effect in 1929. Under this system, workers who were injured on the job had to file lawsuits in district court to receive compensation, which 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. That change allows for a faster resolution of cases.

New Mexico's workers' compensation law was revamped again in 1990, when 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 Legislature passed the Workers’ Compensation Act (the Act), which balanced the interests of workers and employers to provide limited benefits to injured workers regardless of fault. In exchange for employers entering the no fault system, they were given an exclusive remedy to tort liability. Workers were given the ability to receive immediate reasonable and necessary medical care when injured or made ill from the job.

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

The WCA's responsibilities expanded over time, until in addition to its judicial functions, it was tasked with pursuing fraud, providing assistance to workers and employers, regulating self-insured employers and providing safety guidance and inspections to certain employers. Since its inception, the agency has established six field offices in addition to its main headquarters in Albuquerque, to better serve all New Mexico residents.

The WCA works with an Advisory Council 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 has managed passage of 20 bills from 1996 through 2015 that help clarify the law and provide help to both workers and employers.

The New Mexico Workers’ Compensation Administration continues to provide services related to workers’ compensation, and it enforces the Workers’ Compensation Act.
Insurance Coverage
Requirements of Employee Coverage

Workers’ compensation insurance protects your business and your assets. All employers who employ three or more workers are required by law to have workers’ compensation coverage.

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. Coverage is not required for real estate salespeople. Coverage is not required for federal employees covered by the Federal Workers’ 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 by filing their decision with their insurance carrier and the Director of the WCA. Despite opting out, the executive must still be counted for determining the number of workers.

See the Glossary section for definitions of “sole proprietor” and “executive employee.”

Construction
Workers’ compensation law requires coverage for all employers engaged in activities required to be licensed under the provision of the Construction Industries Licensing Act, 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. Executive employees may exempt themselves from coverage by filing an election form with the WCA. A sole proprietor in the construction industry may choose not to acquire coverage by likewise submitting an election form.

Please consult the glossary section of this workbook for the meaning of sole proprietor or executive employee, as determined 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 make 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, workers on call, and more. It is more important than ever for business owners to correctly classify those who work for them.

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. In general, though, the rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what and how the work will be done.

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 that this can happen and prepare for this possibility by charging 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 that the insurer was responsible to pay the claim, then they reason that they will be responsible in the future for similar cases.

If there are people working for or with a business who may be considered employees, the insurer may insist on charging premium for those individuals. Purchasing coverage for these workers eliminates 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, go to the WCA website and download the Executive Employee Affirmative Election Form.

In counting the number of employees of the corporation or limited liability company 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, to include the one exempted executive employee, the company must acquire coverage for the other two employees. The salaries of the exempted individuals are not counted in determining the premium. This exemption means that exempt executives would not be able to make a claim for benefits if injured at work. 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 described above.

Part-time Workers

Part-time workers must be counted for the coverage requirement. An employer who has three part-time workers is required to have coverage.
**Temporary and Seasonal Workers**
Workers employed seasonally or on a temporary basis also fall under the coverage requirement.

**Non-profit Organizations**
Non-profit, 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 coverage. This protects the workers in case of injury, and protects the business from lawsuits through the “exclusive remedy” doctrine of workers’ compensation.

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, with no limits on the damage award.

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.

**Penalties for Non-Coverage**
Businesses that fail to obtain workers’ compensation insurance despite being legally required to do so may incur penalties. 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. A designated hearing officer will examine evidence showing that the business comes under the coverage requirement. If the business is illegally uninsured, the evidence is taken to a district court judge who will issue a temporary restraining order against the business. The business is then closed down until it comes into compliance with the law.

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

If a business doesn't have coverage and an employee is injured, the employee could sue in district court, where there is no limit on damages.

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.
Out-Of-State Employers with Operations in New Mexico

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

A business not domiciled in the state that employs workers engaged in activities required to be licensed under New Mexico’s Construction Industries Licensing Act must carry worker’s compensation insurance no matter how many workers are employed by the business.

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 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.

Sometimes 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. This coverage protects the workers and greatly reduces risks for the employer.

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 business has a private business 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.
Obtaining 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 (OSI), and its premium rates must be approved by that department.

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 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.

Assigned Risk Pool
Businesses with poor safety records or in high-risk industries who cannot get coverage in the commercial market 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.” Policies in the pool are acquired through New Mexico insurance agents. Any business person who cannot find insurance coverage in the voluntary market should contact an insurance agent about 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 must report claims just as if there were no deductible, and must not attempt to manage claims or 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.

Employee leasing companies and PEOs must have a certificate of workers’ compensation insurance in order to conduct business in the state. Workers’ compensation insurance can be purchased through commercial insurance.

Published by the New Mexico Workers’ Compensation Administration, a state agency.
Publication date: 2015. Laws can change. Check for new information by calling 1-866-WORKOMP or 1-866-967-5667 or look on the Internet at www.workerscomp.state.nm.us
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). Call their Consumer Assistance Bureau to ask about the number of received complaints on companies at (505) 827-6940 or 1-800-663-9782. Also, visit the AM Best Ratings and Analysts to determine a company’s financial strength and ability to meet ongoing obligations to policyholders.

The OSI provides a list of companies that insure workers’ compensation in New Mexico. Find it at http://osi.state.nm.us/guides.
**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 evaluated by an agent and then an 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 which may be changed if circumstances change during the policy year. Once a policy is in place, it covers all employees working in the business. If additional employees are hired during the policy year, those employees are automatically covered. The insurance premium will change to reflect changes in payroll.

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 a business adds employees or otherwise experiences growth or change, the insurance premium might increase. Businesses that consider adding employees to the workforce must remember to consider the additional premium as part of insurance costs.

Insurance companies calculate costs based upon an experience modifier. The experience modifier (e-mod) is based on the frequency and severity of claims. 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 will have its modifier lowered to .80 or .70, for example. A higher risk business will have its modifier increased to 1.20 or 1.30, for example. The modifier is used as a multiplier of the total premium.

**Safety Results in Lower Premiums**

An employer with a good safety record may enjoy a significantly lower premium than an unsafe employer in the same industry. 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, quality-oriented workplace and helps make businesses more profitable. See information about the free and professional safety services of the WCA in the Safety section of the book on page 25.

**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 10 percent surcharge 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.

**Insurance Audit Disputes**  
A disagreement over premiums may arise because the carrier claims that certain individuals were covered employees and that the employer owes premium for them, but the employer believes these individuals were independent contractors, not employees. It is important to understand the distinction between an independent contractor and employee. Visit the New Mexico Taxation and Revenue Department online to learn more: http://www.tax.newmexico.gov/Individuals/independent-contractors-vs-employees.aspx.

**Avoiding Errors and Fraud**  
Once workers’ compensation insurance has been obtained, the insurer provides coverage for all employees in the business. 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 could also be fraud. Payment of benefits out of pocket does not necessarily prevent the worker from later filing a workers’ compensation claim or tort action against the employer.

Paying claims out of pocket may deprive the injured employee of important benefits. Occasionally, what appears to be a minor injury develops serious and costly complications over time. Having 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 Responsibilities
Employer Requirements

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

- Display the Workers’ Compensation Act poster along with the Notice of Accident form
- Provide the Notice of Accident form
- Decide who chooses the initial health care provider
- Create a safe workplace
- Pay the workers’ compensation fee to the Department of Taxation and Revenue

Workers’ Compensation Act Poster

The workers’ compensation poster informs employees that their employer has workers’ compensation insurance or self-insurance coverage, and that workers have certain rights if they are injured.

Employers required to carry coverage are required by law 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 in-state contact for workers’ compensation claims (the insurance carrier, self-insurance program or third party administrator) and an in-state telephone number. If your insurer cannot provide you with an in-state 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 21).

Failure to Display Poster and NOA Form Together

If an employer fails to display the poster and NOA form 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.

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 this 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 7 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:**
1-866-255-7665
1-505-941-6000

**Farmington:**
1-866-506-7310
1-505-599-9746

**Las Cruces:**
1-866-878-6525
1-575-524-6246

**Las Vegas:**
1-866-281-7899
1-505-454-9251

**Lovington:**
1-866-534-2459
1-575-396-3437

**Roosevelt:**
1-866-314-8887
1-866-314-8887

**Santa Fe:**
1-866-478-7381
1-505-623-3997

If You Need HELP Call:
Ask for an Ombudsman
Si Usted Necesita Ayuda Llame Al:
Pregunte por un Ombudsman
1-866-967-5667
1-866-WORKOMP (1-866-967-5667)

Visit our website at: www.workerscomp.state.nm.us

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 post this poster where your employees can read it and to post Notice of Accident forms with it. This poster without Notice of Accident forms does not comply with law.

You have other rights and duties under the law.

Published by the New Mexico Workers’ Compensation Administration, a state agency.
Publication date: 2015. Laws can change. Check for new information by calling 1-866-WORKOMP or 1-866-967-5667 or look on the Internet at www.workerscomp.state.nm.us

21
Notice of Accident Form

The Notice of Accident form, or NOA, is a two-part carbonless 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 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 NOA form on page 23).

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.

Employers must also post a notice that advises workers of the requirement to give notice of any accident within 15 days of when they knew or should have known of its occurrence. The notice should be posted in a conspicuous place.
NOTICE OF ACCIDENT OR OCCUPATIONAL DISEASE DISABLEMENT NOTIFICAÇÃO DE ACCIDENTE O ENFERMEDAD DE OFICIO

In accordance with New Mexico law, Section 52-2-19, 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 52-2-19, 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, ____________________________, me lastimé en un accidente en el trabajo o fui incapacitado.

by an occupational disease at approximately _________________________________, on ___________ ____________, 20___________
por enfermedad de oficio aproximadamente (tiempo y hora) el ____________ del 20__________

Employee’s social security number: ____________________________
Número de seguro social del empleado: ____________________________

Where did the accident occur? ____________________________
¿Dónde ocurrió el accidente?

What happened? ____________________________
¿Qué ocurrió?

To be completed by Employer: ____________________________
Worker will choose health care provider. Yes____ No____
Trabajador elegirá proveedor de atención médica.

If Yes, Employer has right to change health care provider after 60 days.
En caso afirmativo, el empleador tiene derecho a cambiar de proveedor de atención médica después de 60 días.

If No, Worker has the right to change health care provider after 60 days.
En caso que no elige, el trabajador tiene derecho a cambiar de proveedor de atención médica después de 60 días.

WORKER MUST INITIAL __________ INICIALES DEL TRABAJADOR

Signed: ____________________________
Firma: ____________________________

Date/Feche: ____________________________
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

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 clínica / 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) 841-6900 - 1 (800) 255-7965
Las Vegas: (505) 454-9251 - 1 (800) 231-7680
Santa Fe: (505) 476-7381

Farmington: (505) 599-9746 - 1 (800) 866-7310
Lovington: (575) 366-3437 - 1 (800) 824-2450
TDD for the deaf: (505) 641-6043

Las Cruces: (575) 524-6226 - 1 (800) 870-9629
Roswell: (575) 625-3997 - 1(800) 311-8567

www.workcomp.state.nm.us

Employer/employee: Each keep one copy.
Empleador/empleado: Retener una copia.

Form NOA-1-W (4/12)
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 employees 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 sixty day period of initial HCP choice runs from the date of first treatment, examination or consultation with the HCP.

A certain process must be followed in order for an injured employee to change doctors. By this time, claim management by the insurer or self-insurance program should be in place, and the employer will probably not be actively involved in the decision.

Communication with the worker’s doctor should not take place without the worker’s written permission.

Getting Emergency Medical Care

In an emergency, employees have the right to seek reasonable and necessary medical care at the most convenient location. If a business has a preference for a particular health care facility, it should be communicated with employees. However, it cannot 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.
Safety

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

Prepare for Accidents and Emergencies

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. A transportation plan should be in place so that in the event of an emergency, employees know who will transport an injured worker to the emergency or urgent care facility.

Requirements for an Annual Safety Inspection

If a company’s workers’ compensation premium with a commercial carrier is $15,000 or greater, or if a business is self-insured, it must conduct an annual safety inspection that meets the minimum inspection standards of the WCA. This inspection can be done by:

- A safety consultant employed by the WCA (this is a free service);
- Yourself, if done properly;
- A hired safety professional;
- A safety specialist from the company’s insurance carrier or self-insurance program.

The insurer is required by law to provide the safety inspection if you request it.

The Annual Inspections and Proof of Inspections information sheet as well as the Safety Affidavit can be found in the Appendix of this booklet. They are also downloadable from the WCA website. Both provide help when conducting safety inspections.

WCA’s Role in Reducing Costs Through Safety

The WCA has a staff of safety consultants who can provide a range of free safety services at the workplace. Get as little or as much help as needed, ranging from showing a safety video from the WCA library to helping with an in-depth safety program. WCA safety consultants are also available to provide annual safety inspections, free of charge. Contact the nearest WCA office for more information.

The WCA publishes two booklets devoted to safety. The Annual Safety Inspections guide is designed to helping businesses implement their own simple safety inspection. The booklet describes the minimum standards for a safety inspection that are acceptable to the WCA. 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 is a guide for business owners and managers on comprehensive safety program planning. Both booklets can be downloaded from the WCA website.

Safety Devices

Workers’ compensation law requires employers to provide whatever types of safety devices are appropriate for the workplace. If employers fail to provide a safety device required by law or commonly used in the industry, the injured workers’ 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.

Risk Reduction Program

The WCA has a Risk Reduction Program for extra hazardous employers. The program helps employers identify and eliminate occupational hazards in order to prevent workplace accidents. See page 47 for information on when employers might be required to be part of the program.
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 Workers’ Compensation Act, must pay a quarterly fee called the workers’ compensation assessment fee (Section 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, which should be taken as a payroll deduction.

Payment is due by the last day of the month following the end of the quarter. Employers must report and pay both fees using the form WC-1, Workers’ Compensation Fee. Instructions for the WC-1 are available online at http://www.tax.newmexico.gov/Businesses/workers-compensation.aspx. Employers must register with the Taxation and Revenue Department in order to file the WC-1.

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 New Mexico Taxation and Revenue Department using the Application for Business Tax Identification Number Form. Existing businesses will use the Employers Quarterly Wage, Withholding and Workers Compensation Fee Report. All forms are available at the TRD website, www.tax.state.nm.us under Forms and Publications.

Reporting the Fee

With the workers’ compensation fee, there is a dual reporting requirement. Forms for both reporting requirements are found online at the TRD.

1. The WC-1 form 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) by going to https://tap.state.nm.us.

2. Include workers’ compensation fee information on the ES903A form (Quarterly Wage and Contribution Report) that you file with the New Mexico Department of Workforce Solutions. If you are exempt from filing with the Department of Workforce Solutions, file the TRD-31109 (Quarterly Wage, Income, Withholding and Workers’ Compensation Fee Report) with Taxation and Revenue. Both forms can be filed online at TAP.

If a business makes changes or ceases to do business in New Mexico and wants to stop receiving forms, contact the Taxation and Revenue Department.

The workers’ compensation assessment fee is not due for executive employees who have exempted themselves from coverage. (See page 9 in the Insurance Coverage section).
Workplace Injuries
Post-Injury Procedures

Workers who are injured on the job or who develop an occupational illness will need to first get reasonable and necessary medical care. They will also begin the process of filing a workers’ compensation claim.

Workers’ compensation private insurance pays 100 percent of the authorized medical expenses for a worker injured on the job or as a result of an occupational disease. The worker is not to pay anything. The company’s workers’ compensation insurer or self-insurance program will pay these expenses.

Notification of Accidents
The injured worker must fill out a Notice of Accident form (NOA), by statute. Injured workers have 15 days from when they knew or should have known of the accident to fill out the form. The 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 page 22).

Actual notice of an accident by a supervisor can substitute for written notice. Actual notice can take several forms, to include direct observation of the accident or the consequences of an accident. Actual notice is subject to the same time limitations and requirements of written notice. If a worker is prevented from giving notice because of circumstances beyond the worker’s control, notice must be given within 60 days.

Once the NOA form has been used to report an accident, the employer is required to accept the form as the worker’s official notice. The employer signs and dates the form and gives the worker a copy. Once an accident is reported to the employer, the employer should immediately notify their insurance carrier.

Using an E1 Form
Once the accident has been reported, employers work with their insurance carriers. The form called the Employer’s First Report of Injury or Illness is commonly called an E1 form, and will need to be filled out. E1 forms are available from the insurer or self-insurance program. The blank form can also be downloaded from the WCA website.

Either the employer or the insurer or self-insurance program must file the First Report of Illness or Injury (E1) with the WCA within the statutory deadline of 10 days. There are penalties for not promptly reporting accidents to the insurer or when required, submitting the report to the WCA.

By law, a business, its insurer or its self-insurance program are required to provide a paper copy of the E1 to the injured employee. The worker should get a copy with both the front and back of the form.

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. Any concerns should be communicated to the insurer and on the E-1 form. Do not interfere with an employee’s right to file the claim. Employers may confer with their insurer to provide insight relevant to efficient management of the claim.

A company’s insurer has the right to manage workers’ compensation claims, not the employer (unless the company is individually self-insured). Injuries should be reported promptly, after which the insurer will take over the claim management and pay the bills. This is true even with a deductible policy.

It is important to stay in communication with the adjuster, and provide relevant documents
about the claim and any investigations. Share findings or suspicions early on.

**Medical and Indemnity Benefits**

When a worker is injured on the job or becomes ill as a result of conditions at work, the employer’s workers’ compensation insurance pays the medical bills. After a specific period of time (see page 33), partial wage support is introduced as well.

Workers accept limits on the amount of money they can recover from any injury, no matter how serious or who was at fault, in return for the guarantee of prompt, necessary care. Through the “exclusive remedy” doctrine, the worker’s recovery is limited to workers’ compensation. The worker is barred from suing the employer in tort for an accidental work-related injury (except in narrow cases).

From the time the worker has lost more than seven work days, either consecutively or on and off, the insurer or self-insurance program has 14 days to pay the first indemnity paycheck to the worker. If a worker is out of work more than seven days, the worker qualifies for temporary disability benefits. This continues during the period of rehabilitation.

Prompt notice to the insurer or self-insurance program helps the claims representative meet the 14 day deadline. If the worker is going to be entitled to indemnity benefits, the employer is required to provide the worker’s wage information to the insurance adjuster for the 26 weeks before the accident. The worker’s indemnity benefit 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, meals, etc. If the worker has been working for fewer than 26 weeks, provide all wage information for whatever was the period of time of employment.

Even if an employer intends to recommend denial of the claim, the worker must be provided with the identity of the insurance carrier and the source of coverage. Provide enough information so that the worker can contact the insurer or self-insurance program. It is a violation of the law to fire or otherwise punish or threaten an employee simply for filing or attempting to file a workers’ compensation claim. If an injured worker is dismissed or replaced, even for legitimate business reasons, the employer may be required to rehire such an employee under certain circumstances.

**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 if an accident occurs, what to do and what to request remains clear.

**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.

**The Claims Process**

After an accident or illness, the benefits due to the worker follow a pattern. The flow chart on the next page follows the process of an undisputed claim. A worker sustains an injury on the job, reports the accident, and the employer reports the accident to the insurance carrier. The adjuster calculates and pays out benefits, and the worker gets reasonable and necessary care until able to return to work (see page 30).
Worker is hurt on the job

Get emergency care first if needed

Report accident
Fill out Notice of Accident Form within 15 days

Employer reports accident to insurance carrier, who determines if accident was work-related

Medical treatment if injury deemed work related, possible indemnity benefits
Employer chooses doctor or lets worker choose

Insurance adjuster calculates and pays out benefits

Worker gets well and goes back to work (indemnity benefits stop)

Ongoing reasonable and necessary care for work injuries

Worker may get indemnity benefits to compensate for permanent disability
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. Employers should be aware of other costs that are included in medical benefits.

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.

Travel benefits include:

- The ticket cost for bus, train or airplane travel;

- A mileage rate for miles workers drive in their own car;

- The costs of staying away from home overnight, if necessary, which includes the actual reasonable costs of a hotel or motel room;

- Meals or a “per diem” amount to cover these costs.

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

Time for Medical Appointments

If the worker is at 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 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 worker that is work related, the physician will assess the worker’s ability to return to work with or without restrictions. If the worker is given restrictions, the employer must make every effort to change work conditions to accommodate the worker.
Indemnity Benefits

If the injured worker is entitled to indemnity benefits, employers are required to provide the workers’ 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 Benefits
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 benefit rate is two thirds of the worker’s average weekly wage (66 2/3), based on gross wages for the 26 weeks before the accident. The comp 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.

Temporary total disability benefits are paid only until the worker returns to work at either full capacity or with medical restrictions, 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, 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 a worker after they have reached MMI. These benefits are based on the worker’s disability rate and other factors. Permanent disability is compensated differently depending on the nature of injury or illness and the body parts affected. There are two types of PPD benefits.

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. The compensation rate is calculated at two-thirds of the pre-injury average weekly wage.

Whole Body - Impairment with Modifiers
If at the time of MMI the worker cannot medically return to work, or has not been offered a job that can be performed, or is earning a lower wage, the worker is entitled to receive a change to the impairment rating benefits. The change 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 total PPD rating is less than 80 percent, the duration of indemnity 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 700 weeks.

**Scheduled Injury**

A scheduled injury is an injury limited to a specific body part. Benefits are paid for the loss or loss of use of body members that include an arm, hand, finger, leg, foot, toe, sight or hearing. Benefits are paid as a percentage of the compensation rate computed from the loss of use percentage. The number of weeks scheduled benefits are due depends on the body part injured or lost. This is determined by statute. Loss of use is not the same as impairment. It reflects the loss of function caused by the injury or impairment.

**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**

Death or survivor benefits are payable if the worker dies as a result of an injury within two years of the injury date. The maximum payable, in addition to funeral expenses, is the amount the worker would have received in temporary total disability benefits for 700 weeks. These benefits are paid only to a spouse, dependent children, or other family members who were dependent on the worker, according to a formula.

**Lump Sum Settlements**

The Workers’ Compensation Act allows a worker and the employer to resolve a claim for injury in a lump sum settlement as long as all parties are in full agreement of the appropriateness of the resolution. All settlements are approved by a workers’ compensation judge.

Claims that can be 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 Workers’ Compensation Act requires New Mexico employers to carry workers’ compensation insurance if they have three or more workers or are engaged in activities requiring licensure under the Construction Industries Licensing Act, regardless of the number of employees. There are some exceptions (see p. 8).

The WCA’s Employer Compliance Bureau is charged with investigating employer compliance with the mandatory insurance provisions of the Act. 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 their business. When an employer who is required to have workers’ compensation insurance fails to present proof of coverage to the Employer Compliance Bureau, the investigating compliance officer will refer the employer to the WCA Enforcement Bureau for administrative prosecution.

If after an administrative hearing has been completed and a fine given to encourage obtaining coverage has been unsuccessful, the Enforcement Bureau is authorized by statute to obtain a Temporary Restraining Order. A District Court judge can give the order for the business to immediately stop operating. The order may authorize the Enforcement Bureau, with the help of local law enforcement, to lock a business and disable the use of any vehicles identified with the business.

These measures are taken to protect employers and their assets. If a business without coverage has an injured employee, the employee could sue in district court, where there is no limit on liability and damages. Having workers’ compensation insurance ensures any claims made for 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, working outside medical restrictions, and late/non reporting of E-1’s and E-6’s. 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. The Enforcement Bureau also works collaboratively with other bureaus to ensure compliance with all provisions of the Act.

Fraud, Bad Faith and Unfair Claims Processes
These allegations are made when any party misrepresents or omits relevant information that affects the determination of benefits, and when that party has a duty to tell the truth or to disclose full information and they fail to do so. 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 by the Enforcement Bureau.

Other Technical Violations
Examples (not an exclusive list) include: an employer’s failure to make timely initial first payments; 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; or any worker’s failure to complete their duties to support their claims.

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 business, and often a letter requesting additional information (Notice or Pending Investigation or NOPI). The letter contains information on allegations and what relevant information is sought. All parties subject to the Workers’ Compensation Act who receive such a letter must cooperate. 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/legal action is received, a prosecuting attorney evaluates the case. Administrative charges are filed through a Notice of Administrative Enforcement Proceeding (NAEP) and after a Director’s Finding of Probable Cause has been made. A Director’s hearing is then set to determine if violations have occurred. NAEPs are also filed with pending benefits cases brought before WCA judges, where the judge determines if any administrative violations have been made. In either case, the NAEP is sent to the alleged offender, and anyone receiving such a notice must appear for dates set for hearings.

What the Enforcement Bureau Cannot Do
1. Provide legal advice that your own attorney would give;  
2. Advocate or represent your interests in a matter under adjudication;  
3. Substitute its judgment or opinion for the WCA judge’s; and  
4. Interfere with negotiations or communications with your opposition.
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 conducts a mandatory mediation conference on every complaint within 60 days of filing. 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 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 a court order unless rejected by both parties, at which point a formal hearing takes place with a workers’ compensation judge.

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.
Workers’ Compensation Dispute Resolution

Dispute

Talk to an Ombudsman

File a Complaint
WCA Clerk of the Court

Mediation Conference at WCA

Recommended Resolution (RR)

Accept RR
Dispute Resolved

Do NOT Accept RR

Appeal

Formal Hearing
Dispute Resolved
WCA Judge
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 a lawyer. If insured, your carrier will provide an attorney. If not insured, you can represent yourself or retain an attorney.

A lawyer can be hired at any point in the claim to represent your interests.

The WCA does not provide attorney representation or make recommendations for specific lawyers. To find a lawyer 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 lawyer 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 the attorney’s fee is paid by the worker and half by the insurer or self-insurance program. Fees for the worker’s attorney must be approved by a workers’ compensation judge.
Appendix
Annual Inspections

The 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. Your workplace is required to have an annual safety inspection if:

- Your insurance premium is $15,000 or more;
- You are a certified self-insured business;
- You pay $15,000 or more as a member of a certified self-insured group.

The required inspection can be accomplished by:

- A WCA safety consultant.
- The business can conduct a self-inspection using their own checklist or the guide found at the WCA website at www.workerscomp.state.nm.us.
- The business’ insurance company will conduct the inspection when requested by the business.
- A professional independent safety consultant may perform the inspection.

The first three options are free of charge. If a business decides to self-inspect, it is encouraged to call the WCA and request the services of a safety consultant who will help them create a more complete checklist, explain the process and teach them what to look for as they conduct their inspection.

Proof of 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 30 days of the completion of the inspection for all locations. This inspection must be a complete inspection of all your 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 affidavit found at the back of this book on page 50 and mail it to the WCA. The affidavit must be notarized. The affidavit form is also at the back of the Workers Compensation Handbook for Safety, found on the WCA’s website under the Safety heading.

Proof of inspections should be sent to:

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

STATE OF NEW MEXICO )
COUNTY OF ____________________ ) ss.

To: Safety Program Manager
Workers’ Compensation Administration
Post Office Box 27198
Albuquerque, NM 87125-7198

I, _________________________, after having been duly sworn, state and affirm that:

1. I am the ___________________ (job title) of ___________________ (company name).
2. That the company has completed its statutory requirement for an annual safety inspection.
3. We submit the following information per your request:

Name of business: ___________________________________________________

Federal Employer Identification Number (FEIN): ______________

Business Address**:________________________________________________________

City: ___________________________ State: _____________ Zip Code: ____________

Date of Safety Inspection: ____________________________

Inspection performed by: ____________________________________________

If there are any questions, the WCA should contact ___________________________
at the following phone number ________________________________.

____________________________________
Signature

SUBSCRIBED AND SWORN to before me this ________ day of ________________________,
20____ by _________________________________.

____________________________________
Notary public

My commission expires:

_____________________________________

*Give address for the main location in New Mexico. All other addresses should be on an attached sheet.
Extra Hazardous Employers

Under New Mexico law, the Workers’ Compensation Administration (WCA) is charged with 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.

The WCA provides an in-depth Risk Reduction Program (RRP) for employers with an above average accident frequency and higher than average workers’ compensation insurance premiums. The program helps employers identify and eliminate occupational hazards, prevent accidents, and lower costs associated with accidents.

Companies are identified and enrolled into the Risk Reduction Program by the WCA’s Safety Program Manager. 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 to evaluate effectiveness of the plan.

The first step of an RRP is to schedule a safety consultation to occur within 30 days of receiving notice. In order to more completely identify risks and hazards, this inspection can be completed by a WCA safety consultant, a loss control representative from your insurance company, or an independent professional safety consultant. With the inspection complete, a consultation can take place and will include the business owner/manager, the WCA safety consultant, and the person completing the inspection, if different from the WCA safety consultant.

The business will then submit a specific action plan to address the issues discussed during the consultation. Once the plan has been reviewed and accepted, it will be implemented. A follow up review to determine how effective the plan is working will take place in six months.

A written request to be removed from this program can be submitted to the WCA Director within five days of the notice. See 11.4.2.9(B)(3)(b) NMAC.
Glossary
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 impairment rating workers’ compensation injuries in New Mexico.

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.

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

Claims Representative
A person from an insurance company, self-insurance program, or third party administrator who processes the worker’s claim. This person is the worker’s contact person for matters concerning the worker’s claim, benefits, payments and other matters.

Compensation
Payments to an injured or ill worker for lost work time as a result of a job-related injury or illness or for a permanent disability.

Complaint
A legal document filed in a workers’ compensation dispute. It is a special type of lawsuit handled through the WCA.

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

Disability Rating
A percentage value for an injured worker that includes the impairment rating and, if appropriate, factors for age, education, training, and the change in the worker’s physical ability. A disability rating is used to determine benefits for an injured worker with a permanent disability.

Executive Employee
The chairman of the board, president, vice-president, secretary, treasurer or other executive officer, if he/she 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.

Employer’s First Report of Injury (E1)
The form that an insurer or self-insurance program is required to file with the WCA to provide a record of a workers’ compensation claim. Most E1 forms are filed electronically. The employer or insurer is required to provide the worker with a copy of the E1.

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.

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.
International Classification of Diseases (ICD)
The International Classification of Diseases (ICD) is a standard diagnostic tool used to analyze the general health of populations and groups. It is used by those in the health care professions to store and retrieve diagnostic information. The WCA requires use of the ICD’s latest version, the ICD-10, to provide diagnostic coding for use with workers’ compensation health care providers, insurance carriers, clearinghouses and billing services.

Impairment Rating
A percentage number used to “rate” the permanent impairment of an injured worker. An impairment rating can only be given by the treating health care provider or an 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.

Lump Sum Payment
A single workers’ compensation indemnity payment in place of the recurring payments that would otherwise be received over a period of time. Two types of lump sum settlements are allowed, a partial lump sum for debt, and a return to work lump sum.

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 (attorney) from the WCA who meets with the disputing parties, out of court, to try to reach an agreement.

Mental Impairment
A mental condition that was the result of a workplace accident or injury.

Mileage Rate
An amount of money paid 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 or more miles each way.

Modified Work
Work that has been changed to enable an injured worker to return to a job.

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

Occupational Disease
A disease that is caused or partly caused by the specific job a worker does.

Occupational Injury
An injury that happens on the job.

Party
Typically, the worker or the employer and insurer or self-insurance program. Each is a “party” in a dispute over a claim.

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)
A category of indemnity benefit payable when a worker has a permanent physical impairment after reaching maximum medical improvement (MMI). The benefit amount is determined by the worker’s physical impairment as rated by the AMA Guides, and if the worker is unable to return to work, by a formula based on the worker’s age, education and residual physical capacity.

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 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.

Repetitive Motion Injury
An injury caused by doing the same physical motion repeatedly over a long period of time.

Residual Physical Capacity (PC)
A rating of an injured worker’s ability to perform physical tasks compared to the physical tasks usually performed at work before an injury.

Retaliation
Retaliation is any adverse action that a company takes against an employee because he or she reported a workplace injury or illness. Adverse actions can include firing the employee, giving them negative evaluations, disciplining or demoting them, reassigning them or reducing their pay.

Rules
Rules are additional requirements related to laws, made by government agencies to add details and definitions to laws. 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 (paragraph 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 limited number of weeks.

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

Statute
A statute is a written law passed by a legislative body. Laws pertaining to New Mexico workers’ compensation can be found in Chapter 52 of the NMSA (New Mexico Statutes Annotated). There are 10 Articles in NMSA 52, each relating to a specific area of workers compensation law.

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.

Third Party Administrator (TPA)
A representative hired by an insurance company or self-insurance program to handle workers’ compensation claims.

Whole Body Injury
All other injuries not listed in the scheduled injuries statute.