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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet at **9 a.m., July 9, at the WCA headquarters, 2410 Centre SE, Albuquerque, NM.**

Download agenda at: <http://www.workerscomp.state.nm.us/advisory.php>

Save the Date!

Settlement Week is scheduled for October 26 - 30, 2015.

2015 Legislative Update: "Fowler Fix" Passes

This year's legislative session addressed several bills that would potentially affect workers' compensation in New Mexico, with one passing into law.

• **SB 233 Temporary Disability Benefit Changes** – Sen. Pat Woods (R-Curry, Quay & Union-7) and Rep. Carl Trujillo (D-Santa Fe-46). SB 233 was passed by both houses and sent to Gov. Susana Martinez, who signed it into law on April 7, 2015. SB 233 amends the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law to attempt to clarify the durational payment limits in 52-1-25, 52-1-25.1 and 52-1-47 NMSA 1978, which were called into question by the New Mexico Supreme Court ruling in *Fowler v. Vista Care*. The bill removes that ambiguity, limiting temporary total disability (TTD) benefits to a maximum of 700 weeks. The bill also corrects language limiting benefits for primary and secondary mental disabilities, removing the 100-week limitation which was found unconstitutional in *Breen v. Carlsbad Municipal Schools*. The effective date of the bill is June 19, 2015.

• **HB 238 and SB 553 Workers' Compensation Benefits and Intoxication** – Rep. Dennis J. Roch (R-Colfax, Curry, Harding, Quay, Roosevelt, San Miguel & Union-67) and Sen. Cervantes (D-Dona Ana-31). The two nearly identical bills would have clarified what happens when a worker is injured while intoxicated or under the influence of drugs. Both bills allowed medical benefits in such cases, but indemnity benefits would be reduced from 10 to 90 percent. Reductions in benefits would only be allowed in either bill if the employer had a written drug and alcohol policy. Both bills had added language so a worker's dependents would not be denied or reduced benefits in the event of a worker's death. HB 238 had also been amended to allow for an increase in worker benefits if the employer knew or should have known a worker was under the influence of drugs or alcohol.

HB 238 passed the House 64-2, and received a unanimous do pass in the Senate Corporations Committee. It then passed the Senate Judiciary with

an amendment, which the WCA Advisory Council did not endorse or support. The bill was not called to the Senate floor for a vote. SB 533 passed the Senate Corporations and Senate Judiciary Committees. The amendment to HB 238 was also proposed for SB 553, but the amendment was tabled in the Senate Judiciary. SB 533 was not called to the Senate floor for a vote.

• **HB 250 Workers' Compensation Return to Work and Benefits** – Rep. Randal S. Crowder (R-Curry-64). HB 250 would amend the return to work provisions of the Workers' Compensation Act to encourage return to work and to clarify benefit entitlement. In light of recent court decisions, *Cordova v. KSL Union*, 2012-NMCA-083, and *Hawkins v. McDonalds*, 2014-NMSC-048, the bill outlined that the worker would not be entitled to TTD benefits if the employer makes a bona fide, reasonable offer of work at or above the worker's pre-injury wage, within medical restrictions. The worker would also not be entitled to benefits if the worker accepts employment with any other employer at or above the worker's pre-injury wage, or if the worker is terminated for misconduct connected with the employment. The bill provided bad faith penalties against employers who terminate workers to avoid benefits payments. The bill unanimously passed the House and received a do pass from the Senate Corporations Committee, but was tabled in the Senate Judiciary Committee.

• **SB 51 Workers' Compensation Air Ambulance Fee Schedule** – Sen. Carroll H. Leavell (R-Eddy & Lea-41). The bill amended sections of the Workers' Compensation Act so that a fee schedule could be established for intrastate air ambulance services for injured workers in New Mexico, and allowed for utilization review on claims that involve air ambulance transport. The bill would require the WCA Director to set the maximum billable charge for air ambulance transport of injured workers, thereby limiting fees charged. The bill was never scheduled for a committee hearing.

Self-Insurance and Regulatory Audit Bureau Loyal to Its Mission

By Aileen O’Catherine

Workers’ Compensation Administration Self-Insurance Bureau auditors are dedicated to a mission of ensuring the legal compliance, strength and viability of self-insurance programs in New Mexico so that injured employees get needed workers’ compensation and employers have an economical method of managing claims.

New Mexico is one of many states that allows a qualified employer to self-insure for workers’ compensation coverage. Companies must have a net worth of \$2.5 million in order to self-insure. The state also allows smaller employers in similar fields to join together to create group self-insurance pools. In 2013, 34.3 percent of New Mexican workers covered by workers’ compensation insurance were insured through a self-insurance plan. The 2,591 employers in the state using self-insurance provide 243,184 employees with workers’ compensation coverage.

Andy Romero oversees the Self-Insurance Bureau at the Workers’ Compensation Administration (WCA), where he and a staff of six auditors ensure compliance with the Workers’ Compensation Act and rules for each company within their charge.

The Self-Insurance Bureau works with a wide variety of companies, to include technical, retail, construction, government and food service firms. Auditors may look at

workers’ compensation claims in the field all day, examining doctor’s notes, disability ratings, and time off from work. A different day may involve looking at financial information in the office. Bureau auditors are required to have expertise in areas that include accounting, auditing, workers’ compensation law, insurance, security instruments, contracts and claims adjustment.

The main objectives of the bureau are to ensure injured employees of self-insured entities receive the medical and indemnity benefits they are entitled to and in helping employers keep the cost of workers’ compensation down. The cost per claim for self-insurance in New Mexico is lower than it is for companies insured with commercial carriers, and Romero believes it’s because self-insurers are more involved.

“They probably put more money into their safety and return to work programs,” Romero said. “They’re more directly involved with injured workers and that’s why they do better.”

Because self-insurers pay for their own claims, they have more incentives to implement cost-cutting measures. They save money when a worker returns to work sooner, so they create programs to ensure employees can get back to work as soon as possible after an injury.

The bureau closely monitors all self-insurers, looking for fraud by either employer or employee, overpayments, underpayments, proper filing of required reports, acceptable safety and risk management programs, and mismanagement of claims. Anything the law and the rules require is game for an audit.

Romero points out that auditors also look at an employer’s workers’ compensation liability and costs over the life of a claim. The rules require each company to maintain security so enough money remains to pay claims even after a bankruptcy. The security is based on the company’s workers’ compensation liability, so it is important to always know what that is.

The security is one way to make sure claimants are paid in case something happens to the company, Romero says. Another is the New Mexico Self-Insurers’ Guarantee Fund, which is owned by the self-insured employers and administered by the Self-Insurance Bureau at the WCA. The assessments that are paid by self-insured employers and the proceeds from cashed securities provide assets that can pay for claims of insolvent employers. Monies go into a Guarantee Fund that companies pay into when first certified to self-insure. An assessment takes place the first three years and the money becomes property of the Fund. The payments ensure workers are covered in case of an injury even if a company goes out of business. The Guarantee Fund assets are only used if the posted security proves insufficient. If the Fund is depleted, the self-insured employers are assessed again to replenish it. Romero notes this is where the audit staff can most affect an employer’s cost of workers’ compensation, in making sure there is enough security to avoid using fund assets and reassessing employers.

“We are protecting the employee and the employer,” said Romero. “Those are our two biggest duties.”

Romero takes pride in how the auditors keep the Guarantee Fund fiscally sound, and that up until a few years ago, the Fund had never been tapped. To this day, the impact on the Fund from insolvent employers has been minimal.

Auditors in the bureau are each responsible for an inventory of individually self-insured employers, groups or pools. One also administers the Guarantee Fund.

“They have their defined job to do,” said Romero. “So if a person doesn’t come in, it doesn’t really affect the others. It helps us get along,” he jokes. “They do help each other when they go out and do field audits together, and when there is a need. But they have their own defined inventory.”

That’s important, Romero says. Because auditors are responsible for their

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NM Workers’ Comp. Adm. Quarterly Bulletin

Darin A. Childers Director
Diana Sandoval-Tapia, Public Information Officer
Aileen O’Catherine, Technical Writer

The Bulletin is published in January, April, July and October by the Economic Research Bureau of the New Mexico Workers’ Compensation Administration. The Bulletin is available free of charge. Send changes of address and requests to receive the Bulletin to Diana Sandoval in the Economic Research Bureau, New Mexico Workers’ Compensation Administration, diana.sandoval@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 <http://workerscomp.state.nm.us/research/index.php>.

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 meets several times a year on an irregular schedule. Scheduled meetings of the Council are announced on the WCA website, <http://www.workerscomp.state.nm.us/advisory.php>

Dispute Resolution Mediations Resolve Majority of Filed Complaints at Workers' Compensation Administration

By Aileen O'Catherine

On any given day at the New Mexico Workers' Compensation Administration (WCA), a hive of mediation offices and courtrooms drone with the cadence of shuffling papers, introductions and specifics on an injured worker's case. Files are located, briefs opened and examined, judges called upon to preside. Injured workers, attorneys and insurer/employer representatives gather around a table to decide a case's fate in one of the many mediation processes that take place each day.

In 2014, the WCA Dispute Resolution Bureau conducted 1,889 mediations in an effort to settle workers' compensation complaints. Workers, employers or insurers can file formal complaints, and once filed, a mediation conference must be scheduled within 60 days unless the parties agree to extend the timeframe.

In Courtroom 1, attorney mediator Bonnie Stepleton reviews notes in anticipation of an upcoming mediation. As an impartial observer, the attorney mediator has no vested interest in any outcome. On the one side of the issue is an injured worker. On the other side is the employer with its insurer. Both sides are at the table to talk about the circumstances of the accident and whether or not it is disputed, potential medical and indemnity benefits, and return to work offers. Along with the employer, the employer's insurance carrier has the power to settle a claim. The insurance company adjuster decides how much and whether a claim will be paid.

The parties have some control over the outcome of the case during mediation, explains Stepleton, since they are at the table to discuss the issues, unencumbered by the rules of evidence and civil procedure. The conversations can be difficult, but they can also allow both parties to better understand the other side. Mediation is a way of learning about the strengths and weaknesses of the case. A good mediator can keep all parties talking and help them see the challenges and strengths of their own case.

The WCA has six field offices throughout the state. In the case observed for this

article, the injured worker was in Roswell, so a video conferencing system allowed those there and in Albuquerque to see and hear each other. The audio/visual equipment at each location allows all parties to hear or to mute conversations, creating an opportunity for confidential conversations between worker and attorney. At mediations where all parties are present in one location, attorneys and clients can step out to confer, ensuring client/attorney conversations are private. Mediation conferences are informal, with no transcripts of the proceedings.

In Albuquerque, the employer's attorney and the attorney mediator are seated at a small round table. Stepleton takes notes with information relevant to the case, and the employer's legal counsel discusses points with the employer's insurer via phone since the adjuster was unable to attend the mediation in person.

Mediation tries to facilitate an understanding of both sides of the issue—the worker's and the employer's. At mediation, all parties have an equal say in the process and decide all settlement terms. Mediators prepare a recommended resolution regardless of whether the case settles or not. The mediator memorializes the parties' agreed upon terms into a recommended resolution. If there is no agreement between parties, the mediator issues a recommendation on how the case should be decided.

At a mediation, the mediators introduce themselves and explain what they do and what the process will be like. Mediation can be a creative process and contains a lot of nuance. Though cases sometimes seem similar in nature, they are never exactly the same.

Sometimes, the mediator divides the parties into separate rooms so they can confer on offers and counteroffers. These small discussions, called caucuses, are designed to afford confidentiality for both sides. In this case, since the parties are in separate

locations, the mute button is turned on and off, as necessary.

In the observed case for this article, lawyers go back and forth between their clients with numbers in mind. The case begins with the worker and his attorney seeking an initial dollar amount offer to settle the case, but the amount is higher than the employer/insurance company is willing to pay. The employer representatives counter with a lower offer, but it is lower than the worker is willing to accept. The mediation goes back and forth between parties, with dollar amounts being adjusted. Sometimes parties feel they are paying too much or not being paid enough. Mediation works toward settling the matter.

After an hour of dollar amounts being offered and rejected, the worker and employer/insurer reached a number they can agree on. The worker will settle the claim in exchange for a lump sum payment.

When parties settle, a judge may need to approve the settlement and ensure the parties understand their respective rights and the terms and consequences of the settlement agreement. Only certain settlements require a judge's review and only certain settlements result in a party giving up a right to trial. These are commonly called full and final lump sum settlements.

At the hearing this day, the Albuquerque parties move to another courtroom where a judge is available. The field office dials in to be put on speaker phone. Judge Terry Kramer proceeds with a presentment, and the worker's decision goes on record. The judge states what is before the court, and that the parties have reached an agreement. The lawyers identify themselves and summarize their parts of the bargain. The judge asks a number of pointed questions of the worker, not the least of which is if the worker understands that there could be a trial, and that any settlement precludes that. The worker

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Dispute Resolution Mediations Resolve Majority of Filed Complaints at Workers' Compensation Administration

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is asked again if there are any additional questions. If not, the settlement is approved, paperwork will be processed, and the case will be closed.

Not every case settles at the initial mediation conference. In those instances, the mediator issues a recommended resolution and serves a copy to both parties. If there are points of agreement, the mediator recommends them. For other instances, the mediator recommends something in between each party's wishes, or advises a different course of action altogether, based on the parties' presentations, documents provided and what the mediator knows about workers' compensation law. Within 30 days, both parties must either accept or reject the recommended resolution. A rejection in whole or in part can still be resolved through a pretrial settlement conference. Settlement conferences are frequently conducted during discovery when parties have a clearer picture of the facts and risks. If the case isn't settled, it will result in as-

signment to a workers' compensation judge for disposition.

Of the 1,889 recommended resolutions filed in 2014, 64.6 percent were accepted by the parties. However, among those claims where the recommended resolution was rejected and the claim proceeded to a worker's compensation judge, an additional 16.9 percent settled prior to the need for a formal hearing or trial, some through additional settlement conferences conducted by WCA staff. In 2014, pretrial resolutions accounted for 82 percent of complaints.

New Mexico's workers' compensation mediators have extensive legal experience. Bonnie Stepleton began with the WCA in January 2015 in the newly created position of Mediation Supervisor and had served as a mediator at the WCA for two years in the past. Other WCA attorney mediators are Amme Hogan, who has been a WCA attorney for 13 years and mediator for over one year; Sarah Karni, who has been a WCA mediator for nine years; and Thomas White, who has practiced as a WCA mediator for 22 years.

2015 Legislative Update

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• **HB 31 Line of Duty Injury Act** – Rep. Paul A. Pacheco (R-Bernalillo & Sandoval-23) and Sen. Daniel A. Ivey-Soto (D-Bernalillo-15). HB 31 would enable public safety employees injured performing non-administrative public safety functions to keep duty injury leave benefits as well as accrue service credit toward pension benefits while on leave. The bill would provide for leave to supplement or replace workers' compensation benefits. The bill passed the House and was in its second Senate committee when the session ended.

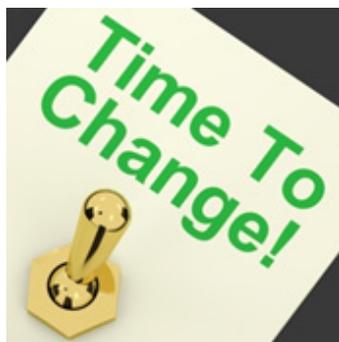


HOLIDAY CLOSURE

The Workers' Compensation Offices in Albuquerque and all its field offices will be closed on the following upcoming holiday: **Memorial Day, Monday, May 25**

NOTICE OF NON-ENFORCEMENT OF ELECTRONIC BILLING RULE

NOTICE IS HEREBY GIVEN that the New Mexico Workers' Compensation Administration will not enforce Paragraph (16) of Subsection C of Section 8, 11.4.7. NMAC, which requires that electronic billing be implemented by July 1, 2015. Public comment will be accepted on a permanent rule change during the next rulemaking cycle.



We're Changing!

To June, that is. The WCA Annual Report will now be printed and available for viewing in June rather than at the end of the calendar year. Look for the 2014 report with a fresh new look on the WCA website. If you'd like to be on the list to receive an electronic copy, send your e-mail information to: Diana.Sandoval@state.nm.us.



Mark Your Calendar!

Settlement Week is scheduled for **October 26 - 30 2015.**

Self-Insurance and Regulatory Audit Bureau Loyal to Its Mission

Continued from page 2

own inventory, the group is only impacted negatively when someone doesn't perform the job. Because each auditor is assigned a relatively constant workload, it is possible for them to focus more deeply on their companies and the employees in their charge.

When an employer wants to be self-insured for workers' compensation, they must apply to the WCA. A decision on whether to certify them is based on a number of factors, to include loss history, financial condition, risk posed, safety program, and their risk management program. The Self-Insurance Bureau makes a recommendation, and the WCA Director has the chance to approve or not. Although most applications are approved because companies have met stringent guidelines, a few have been turned down over the years.

Once a company is self-insured, it is assigned to an auditor who monitors the company's financials and other areas for compliance throughout the year. They look at a company's periodic loss information liabilities. Auditors analyze financial statements that come in a packet at the end of a company's fiscal year. Besides looking at a company's basic financials, they study their claims and excess insurance. If there

are signs that a company is having difficulty meeting demands, auditors increase scrutiny on the company and take necessary measures to protect employee benefits. They look for any news stories about their companies for signs of trouble. They even monitor the insurance companies, banks and sureties utilized by self-insurers to ensure that policies and securities posted through these providers are on solid ground.

Romero believes audit departments should be independent and report things as they see them. Self-insurance auditors are not afraid to ask questions and do the right thing to ensure integrity.

A plaque on the wall of Romero's office reads: "World's Best Boss." Beneath the inscription are the names of the six auditors in his department at the time of the award, two of whom are still with him. Loyalty to each other and dedication to the process of auditing makes the WCA Self-Insurance Bureau a tight-knit group. Until a recent spate of retirements, the seven members of the bureau had been together as a group for 12 years or more. They often lunch together and celebrate each other's birthdays. Employees in the bureau like their job and get satisfaction knowing they are doing

something to help New Mexico's employers and employees.

While the plaque on his wall reads that Romero is the Best Boss Ever, he considers himself the lucky one to work with such qualified professionals.

"I've been very lucky to have good employees," he said. "They are dedicated, conscientious and very experienced."

Current auditors in the bureau are Khaled Ali (17 years), Sandra White (13 years), and those who have been with the bureau a year or less: Jessica Chavez, Daniel Griego, Bogdanka Kurahovic, and Ed Sanchez. Though some staff members are new to the job, each is very experienced in financial operations, and has helped the bureau maintain solid footing.

Though auditors mainly work independently, the team effort of the Self-Insurance Bureau keeps the many operations it performs running smoothly. The department is loyal to each of its members, and to their mission of helping employers conduct business and ensuring workers receive medical care and indemnity benefits through the workers' compensation system.

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
Fax Director: (505) 841-6009

Regional Offices

Farmington:

2700 Farmington Ave., Bldg. E, Ste. 2
Farmington, NM 87402
Phone: (505) 599-9746
In state toll-free phone:
1-800-568-7310
Fax: (505) 599-9753

Las Cruces:

1120 Commerce Dr., Ste. B-1
Las Cruces, NM 88011
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

Lovington:

100 West Central, Ste. A
Lovington, NM 88260
Phone: (575) 396-3437
In state toll-free phone:
1-800-934-2450
Fax: (575) 396-6044

Roswell:

Penn Plaza Building
400 N. Pennsylvania Ave., Ste. 425
Roswell, NM 88201
Phone: (575) 623-3781
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:

www.workerscomp.state.nm.us