

## Opinion No. 53-5796

August 4, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Ebenezer Jones Assistant Labor Commissioner The Capitol Santa Fe, New Mexico

{\*205} Receipt is acknowledged of your letter dated July 21, 1953, in which you request an opinion as to what authority the Labor and Industrial Commission has to prescribe safety devices as provided in § 57-907 N.M.S.A., 1941 Comp., as amended by the 1953 Legislature, which section reads as follows:

"In case an injury to, or death of a workman results from his failure to observe statutory regulations appertaining to the safe conduct of his employment, or from his failure to use a safety device provided by his employer, then the compensation otherwise payable under the Workmen's Compensation Act shall be reduced by fifty (50%) per centum. {\*206} In case an injury to, or death of a workman results from the failure of an employer to provide safety devices required by law, or prescribed by the Labor Industrial Commission of New Mexico as hereafter provided, then the compensation otherwise payable under the Workmen's Compensation Act shall be increased by fifty (50%) per centum. Provided, further, that any additional liability resulting from any such negligence on the part of the employer shall be recoverable from the employer only and not from the insurer, guarantor or surety of said employer under the Workmen's Compensation Act, except that this shall not be construed to prohibit an employer from insuring against such additional liability.

"And provided further, that no employee of such employer shall file a claim for such additional fifty (50%) per centum compensation under the Workmen's Compensation Act on the basis of an injury, nor shall a dependent of a deceased employee file a claim on the basis of the death of a workman, suffered because of the lack of a safety device, unless said claim shall identify the specific safety device which it is claimed was not furnished by the employer; and the employer shall be under a like duty to specifically allege the specific safety device which it is claimed an employee failed to use before the employer may claim a reduction of fifty (50%) per centum as herein provided."

After carefully reading and interpreting the above quoted statute, as amended, it is clear that the whole act places the burden and authority on the Labor and Industrial Commission to prepare proper rules and regulations prescribing the safety devices required by each industry not otherwise covered by statute and causing same to be filed with the Librarian of the Supreme Court Library, Santa Fe, New Mexico, where they can be available to the public as a public record for the benefit of everybody concerned.

It is suggested by this office that a public hearing be had by the Commission as to safety devices prescribed and proper notice given to all industries concerned, as soon

as can conveniently be done, of the date and time of the meeting and the purpose of same, and what the commission proposed to do concerning the above quoted statute.

It is therefore the opinion of this office that the Labor and Industrial Commission is authorized to prescribe the required safety devices for each industry by proper rules and regulations and cause same to be filed with the Librarian at the Supreme Court Library, Santa Fe, New Mexico as a public record for the benefit of everybody concerned.

We trust that this fully answers your inquiry.

By: Hilario Rubio

Assist. Attorney General