

## **Supreme Court overturns Governor's Veto of Unemployment Schedule for 2012**

In a recently-issued decision, *State of New Mexico ex rel. Stewart v. Martinez*, 2011-NMSC-045, the New Mexico Supreme Court overturned Governor Martinez' line-item veto of legislation setting 2012 employer contribution schedule rates. The legislation, known as House Bill ("HB") 59, increased mandatory employer contributions to the State's unemployment reserve fund beginning on January 1, 2012 and continuing for the remainder of the calendar year. The Supreme Court, in a unanimous decision, determined that the Governor's veto, which struck all language relating to mandatory employer contributions in 2012, effectively exempted New Mexico employers from contribution to the State unemployment fund, in violation of New Mexico's Unemployment Compensation Act ("the Act").

The Act, which mandates employer contributions to the fund, sets forth various employer contribution rates which are determined for a given calendar year based on a variety of factors, including an individual employer's record and the present condition of the unemployment fund. NMSA 1978 § 51-1-11(I). These rates or "schedules" are codified at NMSA 1978 § 51-1-11(I)(4) from Schedule 0, representing the lowest rate of annual employer contribution, to Schedule 6, representing the highest. The schedule for a given year has, in the past, been determined by the state legislature. Beginning in 2013, the annual contribution schedule will be determined according to a so-called "floating calculation" based, in part, on the status of the fund.

During the 2011 legislative session and before, concerns arose about the solvency of New Mexico's unemployment fund given the high rates of unemployment statewide coupled with the relatively low employer contributions, at that time set at Schedule 1. HB 59, which raised the mandatory employer contributions to Schedule 3 for calendar year 2012, was meant in part to increase the monies coming into the fund in the hope of staving off fund insolvency. In the event the fund became insolvent, all employers would be mandated to contribute at the rates set forth in Schedule 6, representing a substantial increase, potentially as great as 300-500% in the contributions required of a given employer. The concern among many employers was that this potential increase in mandatory contributions would itself adversely impact their ability to maintain their workforce at current levels.

The Supreme Court, while recognizing the Governor's power to exercise the line-item veto in particular circumstances, noted that the exercise of such power is impermissible where it leads to inconsistencies in the particular legislation at issue. In *Stewart*, the Court determined that the Governor's veto of the 2012 schedules not only created inconsistencies within HB 59, but with the Unemployment Compensation Act as a whole. By effectively exempting employers from contributing to the fund during 2012 – as the Court noted, likely an unintended consequence of the veto – the Governor's action conflicted with the Act. Having determined the veto to be invalid, the Court reinstated HB 59 in its entirety. Employer contributions to the State unemployment fund for calendar year 2012 will be at Schedule 3 rates.