

ASSEMBLY, No. 1143

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Excludes certain illegal aliens from workers' compensation and temporary disability benefits.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning workers' compensation and temporary
2 disability benefits, and amending R.S.34:15-36 and P.L.1948,
3 c.110.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. R.S.34:15-36 is amended to read as follows:

9 34:15-36. "Willful negligence" within the intent of this chapter
10 shall consist of (1) deliberate act or deliberate failure to act, or (2)
11 such conduct as evidences reckless indifference to safety, or (3)
12 intoxication, operating as the proximate cause of injury, or (4)
13 unlawful use of a controlled dangerous substance as defined in the
14 "New Jersey Controlled Dangerous Substances Act," P.L.1970,
15 c.226 (C.24:21-1 et seq.).

16 "Employer" is declared to be synonymous with master, and
17 includes natural persons, partnerships, and corporations;
18 "employee" is synonymous with servant, and includes all natural
19 persons, including officers of corporations, who perform service for
20 an employer for financial consideration, exclusive of (1) employees
21 eligible under the federal "Longshore and Harbor Workers'
22 Compensation Act," 44 Stat. 1424 (33 U.S.C. §901 et seq.), for
23 benefits payable with respect to accidental death or injury, or
24 occupational disease or infection; **[and]** (2) employees who are
25 aliens unless they were lawfully admitted for permanent residence
26 at the time the employment was performed, were lawfully present
27 for the purpose of performing the employment, or otherwise were
28 permanently residing in the United States under color of law at the
29 time the employment was performed (including aliens who were
30 lawfully present in the United States as a result of the application of
31 the provisions of section 203(a)(7) or section 212(d)(5) of the
32 Immigration and Nationality Act (8 U.S.C. § 1153(a)(7) or 8 U.S.C.
33 § 1128(d)(5), respectively); and (3) casual employments, which
34 shall be defined, if in connection with the employer's business, as
35 employment the occasion for which arises by chance or is purely
36 accidental; or if not in connection with any business of the
37 employer, as employment not regular, periodic or recurring;
38 provided, however, that forest fire wardens and forest firefighters
39 employed by the State of New Jersey shall, in no event, be deemed
40 casual employees.

41 Employment shall be deemed to commence when an employee
42 arrives at the employer's place of employment to report for work
43 and shall terminate when the employee leaves the employer's place
44 of employment, excluding areas not under the control of the
45 employer; provided, however, when the employee is required by the
46 employer to be away from the employer's place of employment, the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 employee shall be deemed to be in the course of employment when
2 the employee is engaged in the direct performance of duties
3 assigned or directed by the employer; but the employment of
4 employee paid travel time by an employer for time spent traveling
5 to and from a job site or of any employee who utilizes an employer
6 authorized vehicle shall commence and terminate with the time
7 spent traveling to and from a job site or the authorized operation of
8 a vehicle on business authorized by the employer. Travel by a
9 policeman, fireman, or a member of a first aid or rescue squad, in
10 responding to and returning from an emergency, shall be deemed to
11 be in the course of employment.

12 Employment shall also be deemed to commence when an
13 employee is traveling in a ridesharing arrangement between his or
14 her place of residence or terminal near such place and his or her
15 place of employment, if one of the following conditions is satisfied:
16 the vehicle used in the ridesharing arrangement is owned, leased or
17 contracted for by the employer, or the employee is required by the
18 employer to travel in a ridesharing arrangement as a condition of
19 employment.

20 "Disability permanent in quality and partial in character" means
21 a permanent impairment caused by a compensable accident or
22 compensable occupational disease, based upon demonstrable
23 objective medical evidence, which restricts the function of the body
24 or of its members or organs; included in the criteria which shall be
25 considered shall be whether there has been a lessening to a material
26 degree of an employee's working ability. Subject to the above
27 provisions, nothing in this definition shall be construed to preclude
28 benefits to a worker who returns to work following a compensable
29 accident even if there be no reduction in earnings. Injuries such as
30 minor lacerations, minor contusions, minor sprains, and scars which
31 do not constitute significant permanent disfigurement, and
32 occupational disease of a minor nature such as mild dermatitis and
33 mild bronchitis shall not constitute permanent disability within the
34 meaning of this definition.

35 "Disability permanent in quality and total in character" means a
36 physical or neuropsychiatric total permanent impairment caused by
37 a compensable accident or compensable occupational disease,
38 where no fundamental or marked improvement in such condition
39 can be reasonably expected.

40 Factors other than physical and neuropsychiatric impairments
41 may be considered in the determination of permanent total
42 disability, where such physical and neuropsychiatric impairments
43 constitute at least 75% or higher of total disability.

44 "Ridesharing" means the transportation of persons in a motor
45 vehicle, with a maximum carrying capacity of not more than 15
46 passengers, including the driver, where such transportation is
47 incidental to the purpose of the driver. This term shall include such
48 ridesharing arrangements known as carpools and vanpools.

1 "Medical services, medical treatment, physicians' services and
2 physicians' treatment" shall include, but not be limited to, the
3 services which a chiropractor is authorized by law to perform and
4 which are authorized by an employer pursuant to the provisions of
5 R.S.34:15-1 et seq.

6 (cf: P.L.1994, c.74, s.1)

7
8 2. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to
9 read as follows:

10 15. Limitation of benefits. Notwithstanding any other provision
11 of the "Temporary Disability Benefits Law," P.L.1948,
12 c.110 (C.43:21-25 et seq.), no benefits shall be payable under the
13 State plan to any person:

14 (a) for the first seven consecutive days of each period of
15 disability; except that if benefits shall be payable for three
16 consecutive weeks with respect to any period of disability
17 commencing on or after January 1, 1968, then benefits shall also be
18 payable with respect to the first seven days thereof;

19 (b) for more than 26 weeks with respect to any one period of
20 disability;

21 (c) for any period of disability which did not commence while
22 the claimant was a covered individual;

23 (d) for any period during which the claimant is not under the
24 care of a legally licensed physician, dentist, optometrist, podiatrist,
25 practicing psychologist, or chiropractor, who, when requested by
26 the division, shall certify within the scope of the practitioner's
27 practice, the disability of the claimant, the probable duration
28 thereof, and, where applicable, the medical facts within the
29 practitioner's knowledge;

30 (e) (Deleted by amendment, P.L.1980, c.90.)

31 (f) for any period of disability due to willfully and intentionally
32 self-inflicted injury, or to injury sustained in the perpetration by the
33 claimant of a crime of the first, second, or third degree;

34 (g) for any period during which the claimant performs any work
35 for remuneration or profit;

36 (h) in a weekly amount which together with any remuneration
37 the claimant continues to receive from the employer would exceed
38 regular weekly wages immediately prior to disability;

39 (i) for any period during which a covered individual would be
40 disqualified for unemployment compensation benefits under
41 subsection (d) of R.S.43:21-5, unless the disability commenced
42 prior to such disqualification; and there shall be no other cause of
43 disqualification or ineligibility to receive disability benefits
44 hereunder except as may be specifically provided in this act;

45 (j) for any period during which the claimant would be ineligible
46 for unemployment compensation benefits under subsection (i) of
47 R.S.43:21-4.

48 (cf: P.L.1989, c.213, s.2)

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill excludes illegal aliens from workers' compensation
7 coverage unless they were lawfully admitted for permanent
8 residence at the time the employment was performed, were lawfully
9 present for the purpose of performing the employment, or otherwise
10 were permanently residing in the United States under color of law at
11 the time the employment was performed (including aliens who were
12 lawfully present in the United States as a result of the application of
13 the provisions of section 203(a)(7) or section 212(d)(5) of the
14 Immigration and Nationality Act (8 U.S.C. § 1153(a)(7) or 8 U.S.C.
15 § 1128(d)(5), respectively).

16 The bill also provides that illegal aliens shall not be eligible to
17 receive benefits pursuant to the "Temporary Disability Benefits
18 Law," P.L.1948, c.110 (C.43:21-25) if they are not eligible for
19 benefits pursuant to the "unemployment compensation law,"
20 R.S.43:21-1 et seq. This bill is in response to the decision of Mateo
21 Coria v. Board of Review and National Fence Systems, No. A-
22 5076-89-T5 (App. Div. 1991). In that case, the Appellate Division
23 of the New Jersey Superior Court held that the "Temporary
24 Disability Benefits Law" does not disqualify individuals for benefits
25 based upon their status as illegal aliens.