

[First Reprint]

SENATE, No. 782

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

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District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Increases workers' compensation for loss of hand or foot; requires Commissioner of Labor and Workforce Development to study effectiveness of workers' compensation program.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on September 24, 2018, with amendments.



(Sponsorship Updated As Of: 5/11/2018)

1 AN ACT concerning workers' compensation and amending
2 R.S.34:15-12 and P.L.1948, c.446.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.34:15-12 is amended to read as follows:

8 34:15-12. Following is a schedule of compensation:

9 a. For injury producing temporary disability, 70% of the
10 worker's weekly wages received at the time of the injury, subject to
11 a maximum compensation of 75% of the average weekly wages
12 earned by all employees covered by the "unemployment
13 compensation law" (R.S.43:21-1 et seq.) and a minimum of 20% of
14 such average weekly wages a week. This compensation shall be
15 paid during the period of such disability, not however, beyond 400
16 weeks. The amount of the maximum compensation shall be
17 computed, determined, rounded out to the nearest dollar, and
18 promulgated by the Commissioner of Labor and Workforce
19 Development on or before September 1 in each year based on said
20 average weekly wages as of the calendar year preceding, and shall
21 be effective as to injuries occurring in the calendar year following
22 such promulgation. In any year in which the maximum benefit rate
23 based upon said computation would not be increased or decreased
24 beyond \$1.00 in amount, the rate promulgated theretofore shall
25 continue.

26 b. For disability total in character and permanent in quality,
27 70% of the weekly wages received at the time of injury, subject to a
28 maximum and a minimum compensation as stated in subsection a.
29 of this section. This compensation shall be paid for a period of 450
30 weeks, at which time compensation payments shall cease unless the
31 employee shall have submitted to such physical or educational
32 rehabilitation as may have been ordered by the rehabilitation
33 commission, and can show that because of such disability it is
34 impossible for the employee to obtain wages or earnings equal to
35 those earned at the time of the accident, in which case further
36 weekly payments shall be made during the period of such disability,
37 the amount thereof to be the previous weekly compensation
38 payment diminished by that portion thereof that the wage, or
39 earnings, the employee is then able to earn, bears to the wages
40 received at the time of the accident. If the employee's wages or
41 earnings equal or exceed wages received at the time of the accident,
42 then the compensation rate shall be reduced to \$5.00. In calculating
43 compensation for this extension beyond 450 weeks the above
44 minimum provision shall not apply. This extension of compensation

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted September 24, 2018.

1 payments beyond 450 weeks shall be subject to such periodic
 2 reconsiderations and extensions as the case may require, and shall
 3 apply only to disability total in character and permanent in quality,
 4 and shall not apply to any accident occurring prior to July 4, 1923.

5 c. For disability partial in character and permanent in quality,
 6 weekly compensation shall be paid based upon 70% of the weekly
 7 wages received at the time of the injury, subject to a maximum
 8 compensation per week of 75% of the Statewide average weekly
 9 wages (SAWW) earned by all employees covered by the
 10 "unemployment compensation law" (R.S.43:21-1 et seq.) and paid
 11 in accordance with the following "Disability Wage and
 12 Compensation Schedule" and a minimum of \$35.00 per week. The
 13 amount of awards for up to and including 180 weeks shall remain at
 14 the amounts listed in the "Disability Wage and Compensation
 15 Schedule" until January 1, 1982. On January 1, 1982, the dollar
 16 amounts listed for the first 180 weeks in the "Disability Wage and
 17 Compensation Schedule" shall be replaced by the following
 18 percentages of the Statewide average weekly wage:

19	\$47-20% of the Statewide	\$61-26% SAWW
20	average weekly	\$63-27% SAWW
21	wages, hereinafter	\$66-28% SAWW
22	referred to as "SAWW"	\$68-29% SAWW
23	\$49-21% SAWW	\$70-30% SAWW
24	\$51-22% SAWW	\$73-31% SAWW
25	\$54-23% SAWW	\$75-32% SAWW
26	\$56-24% SAWW	\$77-33% SAWW
27	\$59-25% SAWW	\$80-34% SAWW
28		\$82-35% SAWW

29 In the event that the 20% limitation for attorney fees as set forth
 30 in R.S.34:15-64 is reduced to a maximum of 10% before January 1,
 31 1982, the above schedule shall be effective within 60 days of such
 32 reduction in attorney fees. All amounts in the "Disability Wage and
 33 Compensation Schedule" shall be rounded out to the nearest dollar.
 34 When a claim petition alleges more than one disability, the number
 35 of weeks in the award shall be determined and entered separately
 36 for each such disability and the number of weeks for each disability
 37 shall not be cumulative when entering an award.

38

39 DISABILITY WAGE AND COMPENSATION SCHEDULE

40

41	Weeks of Allowable	Maximum Weekly Compensation
42	Compensation	Applicable
43		
44	first 90 weeks.	\$47
45	91 through 96 weeks . .	\$49
46	97 through 102 weeks. .	\$49 for the first 96 weeks then \$51
47	for each remaining week	
48	103 through 108 weeks .	\$49 for the first 96 weeks then \$51

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1 for the next 6 weeks then \$54 for
2 each remaining week
3 109-114 weeks \$49 for the first 96 weeks then
4 \$51 for the next 6 weeks then \$54
5 for the next 6 weeks then \$56 for
6 each remaining week
7 115-120 weeks \$49 for the first 96 weeks
8 then \$51 for the next 6 weeks
9 then \$54 for the next 6 weeks
10 then \$56 for the next 6 weeks
11 then \$59 for each remaining week
12 121-126 weeks \$49 for the first 96 weeks
13 then \$51 for the next 6 weeks
14 then \$54 for the next 6 weeks
15 then \$56 for the next 6 weeks
16 then \$59 for the next 6 weeks
17 then \$61 for each remaining week
18 127-132 weeks \$49 for the first 96 weeks
19 then \$51 for the next 6 weeks
20 then \$54 for the next 6 weeks
21 then \$56 for the next 6 weeks
22 then \$59 for the next 6 weeks
23 then \$61 for the next 6 weeks
24 then \$63 for each remaining week
25 133-138 weeks \$49 for the first 96 weeks
26 then \$51 for the next 6 weeks
27 then \$54 for the next 6 weeks
28 then \$56 for the next 6 weeks
29 then \$59 for the next 6 weeks
30 then \$61 for the next 6 weeks
31 then \$63 for the next 6 weeks
32 then \$66 for each remaining week
33 139-144 weeks \$49 for the first 96 weeks
34 then \$51 for the next 6 weeks
35 then \$54 for the next 6 weeks
36 then \$56 for the next 6 weeks
37 then \$59 for the next 6 weeks
38 then \$61 for the next 6 weeks
39 then \$63 for the next 6 weeks
40 then \$66 for the next 6 weeks
41 then \$68 for each remaining week
42 145-150 weeks \$49 for the first 96 weeks
43 then \$51 for the next 6 weeks
44 then \$54 for the next 6 weeks
45 then \$56 for the next 6 weeks
46 then \$59 for the next 6 weeks
47 then \$61 for the next 6 weeks
48 then \$63 for the next 6 weeks

1 then \$66 for the next 6 weeks
2 then \$68 for the next 6 weeks
3 then \$70 for each remaining week
4 151-156 weeks \$49 for the first 96 weeks
5 then \$51 for the next 6 weeks
6 then \$54 for the next 6 weeks
7 then \$56 for the next 6 weeks
8 then \$59 for the next 6 weeks
9 then \$61 for the next 6 weeks
10 then \$63 for the next 6 weeks
11 then \$66 for the next 6 weeks
12 then \$68 for the next 6 weeks
13 then \$70 for the next 6 weeks
14 then \$73 for each remaining week
15 157-162 weeks \$49 for the first 96 weeks
16 then \$51 for the next 6 weeks
17 then \$54 for the next 6 weeks
18 then \$56 for the next 6 weeks
19 then \$59 for the next 6 weeks
20 then \$61 for the next 6 weeks
21 then \$63 for the next 6 weeks
22 then \$66 for the next 6 weeks
23 then \$68 for the next 6 weeks
24 then \$70 for the next 6 weeks
25 then \$73 for the next 6 weeks
26 then \$75 for each remaining week
27 163-168 weeks \$49 for the first 96 weeks
28 then \$51 for the next 6 weeks
29 then \$54 for the next 6 weeks
30 then \$56 for the next 6 weeks
31 then \$59 for the next 6 weeks
32 then \$61 for the next 6 weeks
33 then \$63 for the next 6 weeks
34 then \$66 for the next 6 weeks
35 then \$68 for the next 6 weeks
36 then \$70 for the next 6 weeks
37 then \$73 for the next 6 weeks
38 then \$75 for the next 6 weeks
39 then \$77 for each remaining week
40 169-174 weeks \$49 for the first 96 weeks
41 then \$51 for the next 6 weeks
42 then \$54 for the next 6 weeks
43 then \$56 for the next 6 weeks
44 then \$59 for the next 6 weeks
45 then \$61 for the next 6 weeks
46 then \$63 for the next 6 weeks
47 then \$66 for the next 6 weeks
48 then \$68 for the next 6 weeks

1 then \$70 for the next 6 weeks
 2 then \$73 for the next 6 weeks
 3 then \$75 for the next 6 weeks
 4 then \$77 for the next 6 weeks
 5 then \$80 for each remaining week
 6 175-180 weeks \$49 for the first 96 weeks
 7 then \$51 for the next 6 weeks
 8 then \$54 for the next 6 weeks
 9 then \$56 for the next 6 weeks
 10 then \$59 for the next 6 weeks
 11 then \$61 for the next 6 weeks
 12 then \$63 for the next 6 weeks
 13 then \$66 for the next 6 weeks
 14 then \$68 for the next 6 weeks
 15 then \$70 for the next 6 weeks
 16 then \$73 for the next 6 weeks
 17 then \$75 for the next 6 weeks
 18 then \$77 for the next 6 weeks
 19 then \$80 for the next 6 weeks
 20 then \$82 for each remaining week
 21 181-210 weeks 35% of the Statewide average
 22 weekly wages, hereinafter referred
 23 to as "SAWW"
 24 211-240 weeks 40% of SAWW
 25 241-270 weeks 45% of SAWW
 26 271-300 weeks 50% of SAWW
 27 301-330 weeks 55% of SAWW
 28 331-360 weeks 60% of SAWW
 29 361-390 weeks 65% of SAWW
 30 391-420 weeks 70% of SAWW
 31 421-600 weeks 75% of SAWW

32 Said compensation shall be expressly subject to the provisions
 33 of R.S.34:15-37, and shall be paid to the employee for the period
 34 named in the following schedule (paragraphs 1 to 23 inclusive):

35 Lost Member	36 Number of Weeks' Compensation
37 1. Thumb	¹ [75] <u>80</u> ¹
38 2. First finger (commonly called index finger)	¹ [50] <u>60</u> ¹
39 3. Second finger	¹ [40] <u>50</u> ¹
40 4. Third finger	¹ [30] <u>40</u> ¹
41 5. Fourth finger (commonly called little finger).	¹ [20] <u>30</u> ¹
42 6. Great toe	40
43 7. Toe, other than a great toe.	15
44 8. Hand, or thumb and first and second fingers 45 (on one hand) or four fingers (on one hand). . .	¹ [245] <u>260</u> ¹
46 <u>except that, in the event that the loss of function of the</u> 47 <u>hand is determined to be equal to or greater than a 25%</u>	

- 1 loss of use of the hand, the award shall be calculated
2 based on 300 weeks of compensation.
- 3 9. Arm 330
- 4 10. Foot ¹~~230~~ 250¹
- 5 except that, in the event that the loss of function of the foot
6 is determined to be equal to or greater than a 25% loss of use
7 of the foot, the award shall be calculated based on ¹~~275~~
8 285¹
9 weeks of compensation.
- 10 11. Leg 315
- 11 12. The loss of the first phalange of the thumb or of any finger
12 shall be considered to be equal to the loss of 1/2 of such thumb or
13 finger, and the compensation shall be for 1/2 of the periods of time
14 above specified. The loss of any portion of the thumb or any finger
15 between the terminal joint and the end thereof shall be compensated
16 for a like proportion of the period of time prescribed for the loss of
17 the first phalange of such member.
- 18 13. The loss of the first phalange and any portion of the second
19 shall be considered as the loss of the entire finger or thumb, but in
20 no case shall the amount received for more than one finger exceed
21 the amount provided in this schedule for the loss of a hand.
- 22 14. The loss of the first phalange of any toe shall be considered
23 to be equal to the loss of 1/2 of such toe, and compensation shall be
24 for 1/2 of the period of time above specified.
- 25 15. The loss of the first phalange and any portion of the second
26 shall be considered as the loss of the entire toe.
- 27 16. For the loss of vision of an eye, 200 weeks.
- 28 17. For the enucleation of an eye, 25 weeks, in addition to such
29 compensation, if any, as may be allowable under paragraph 16 of
30 this subsection.
- 31 18. For the loss of a natural tooth, four weeks for each tooth
32 lost.
- 33 19. For the total loss of hearing in one ear, 60 weeks. For the
34 total loss of hearing in both ears by one accident, 200 weeks.
- 35 20. The loss of both hands, or both arms, or both feet, or both
36 legs, or both eyes, or any two thereof as the result of any one
37 accident, shall constitute total and permanent disability to be
38 compensated according to the provisions of subsection b. of this
39 section.
- 40 21. Amputation between the elbow and the wrist shall be
41 considered as the equivalent of the loss of a hand and amputation at
42 the elbow shall be considered equivalent to the loss of the arm.
43 Amputation between the knee and ankle shall be considered as the
44 equivalent of the loss of a foot, and amputation at the knee shall be
45 considered equivalent to the loss of the leg. An additional amount
46 of 30% of the amputation award shall be added to that award to
47 compute the total award made in amputations of body members,
48 provided, however, that this additional amount shall not be subject

1 to legal fees. ¹An award of permanent total disability shall not bar
2 an additional amount from being added to an amputation award.
3 The amount of the additional award shall not be subject to
4 subrogation pursuant to R.S.34:15-40, as it shall not be considered a
5 payment of compensation except for rating purposes.¹

6 22. In all lesser or other cases involving permanent loss, or
7 where the usefulness of a member of any physical function is
8 permanently impaired, the duration of compensation shall bear such
9 relation to the specific periods of time stated in the above schedule
10 as the disabilities bear to those produced by the injuries named in
11 the schedule. In cases in which the disability is determined as a
12 percentage of total and permanent disability, the duration of the
13 compensation shall be a corresponding portion of 600 weeks.
14 Should the employer and employee be unable to agree upon the
15 amount of compensation to be paid in cases not covered by the
16 schedule, either party may appeal to the Division of Workers'
17 Compensation for a settlement of the controversy.

18 23. Where there is a traumatic hernia, compensation will be
19 allowed if notice thereof is given by the claimant to the employer
20 within 48 hours after the occurrence of the hernia but any Sunday,
21 Saturday or holiday shall be excluded from this 48-hour period.

22 d. If previous loss of function to the body, head, a member or
23 an organ is established by competent evidence, and subsequently an
24 injury or occupational disease arising out of and in the course of an
25 employment occurs to that part of the body, head, member or organ,
26 where there was a previous loss of function, then the employer or
27 the employer's insurance carrier at the time of the subsequent injury
28 or occupational disease shall not be liable for any such loss and
29 credit shall be given the employer or the employer's insurance
30 carrier for the previous loss of function and the burden of proof in
31 such matters shall rest on the employer.

32 e. In case of the death of the person from any cause other than
33 the accident or occupational disease, during the period of payments
34 for permanent injury, the remaining payments shall be paid to such
35 of the deceased person's dependents as are included in the
36 provisions of R.S.34:15-13 or, if no dependents, the remaining
37 amount due, but not exceeding ~~【\$3,500.00】~~ \$5,000, shall be paid in
38 a lump sum to the proper person for burial and funeral expenses;
39 but no compensation shall be due any other person than the injured
40 employee on account of compensation being paid in excess of 450
41 weeks on account of disability total in character and permanent in
42 quality as provided by subsection b. of this section.

43 (cf: P.L.1990, c.122, s.1)

44

45 2. Section 3 of P.L.1948, c.446 (C.34:1A-3) is amended to read
46 as follows:

47 3. The commissioner, as head of the department, shall:

48 (a) Administer the work of the department;

1 (b) Appoint and remove officers and other personnel employed
2 within the department, subject to the provisions of **【Title 11 of the**
3 **Revised Statutes】** Title 11A of the New Jersey Statutes, Civil
4 Service, and other applicable statutes, except as herein otherwise
5 specifically provided;

6 (c) Perform, exercise and discharge the functions, powers and
7 duties of the department through such divisions as may be
8 established by this act or otherwise by law;

9 (d) Organize the work of the department in such divisions, not
10 inconsistent with the provisions of this act and in such bureaus and
11 other organizational units as he may determine to be necessary for
12 efficient and effective operation;

13 (e) Adopt, issue and promulgate, in the name of the department,
14 such rules and regulations as may be authorized by law;

15 (f) Formulate and adopt rules and regulations for the efficient
16 conduct of the work and general administration of the department,
17 its officers and employees;

18 (g) Institute or cause to be instituted such legal proceedings or
19 processes as may be necessary properly to enforce and give effect to
20 any of his powers or duties;

21 (h) Make an annual report to the Governor and to the
22 Legislature of the department's operations, and render such other
23 reports as the Governor shall from time to time request or as may be
24 required by law;

25 (i) Co-ordinate the activities of the department, and the several
26 divisions and other agencies therein, in a manner designed to
27 eliminate overlapping and duplicating functions;

28 (j) Integrate within the department, so far as practicable, all
29 staff services of the department and of the several divisions and
30 other agencies therein; **【and】**

31 (k) Study, in consultation with the Commissioner of Banking
32 and Insurance, the State's workers' compensation system and make
33 recommendations that will help foster and maintain an efficient,
34 effective and well-balanced workers' compensation program that is
35 equally responsive to the needs of both the State's workforce and
36 the employer community, and submit a study, with
37 recommendations, to the Governor and the Legislature not later than
38 one year after the effective date of P.L. , c. (pending before the
39 Legislature as this bill), and every five years thereafter; and

40 (l) Perform such other functions as may be prescribed in this act
41 or by any other law.

42 (cf: P.L.1948, c.446, s.3)

43
44 3. This act shall take effect immediately.