

SENATE, No. 212

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators CONNORS and CIESLA

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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. R.S.34:15-36 is amended to read as follows:
8 34:15-36. "Willful negligence" within the intent of this chapter
9 shall consist of (1) deliberate act or deliberate failure to act, or (2)
10 such conduct as evidences reckless indifference to safety, or (3)
11 intoxication, operating as the proximate cause of injury, or (4)
12 unlawful use of a controlled dangerous substance as defined in the
13 "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226
14 (C.24:21-1 et seq.).

15 "Employer" is declared to be synonymous with master, and includes
16 natural persons, partnerships, and corporations; "employee" is
17 synonymous with servant, and includes all natural persons, including
18 officers of corporations, who perform service for an employer for
19 financial consideration, exclusive of (1) employees eligible under the
20 federal "Longshore and Harbor Workers' Compensation Act," 44 Stat.
21 1424 (33 U.S.C.§901 et seq.), for benefits payable with respect to
22 accidental death or injury, or occupational disease or infection; [and]
23 (2) employees who are aliens unless they were lawfully admitted for
24 permanent residence at the time the employment was performed, were
25 lawfully present for the purpose of performing the employment, or
26 otherwise were permanently residing in the United States under color
27 of law at the time the employment was performed (including aliens
28 who were lawfully present in the United States as a result of the
29 application of the provisions of section 203(a)(7) or section 212(d)(5)
30 of the Immigration and Nationality Act (8 U.S.C.§1153(a)(7) or 8
31 U.S.C.§1128(d)(5), respectively); and (3) casual employments, which
32 shall be defined, if in connection with the employer's business, as

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

Matter underlined thus is new matter.

1 employment the occasion for which arises by chance or is purely
2 accidental; or if not in connection with any business of the employer,
3 as employment not regular, periodic or recurring; provided, however,
4 that forest fire wardens and forest firefighters employed by the State
5 of New Jersey shall, in no event, be deemed casual employees.

6 Employment shall be deemed to commence when an employee
7 arrives at the employer's place of employment to report for work and
8 shall terminate when the employee leaves the employer's place of
9 employment, excluding areas not under the control of the employer;
10 provided, however, when the employee is required by the employer to
11 be away from the employer's place of employment, the employee shall
12 be deemed to be in the course of employment when the employee is
13 engaged in the direct performance of duties assigned or directed by the
14 employer; but the employment of employee paid travel time by an
15 employer for time spent traveling to and from a job site or of any
16 employee who utilizes an employer authorized vehicle shall commence
17 and terminate with the time spent traveling to and from a job site or
18 the authorized operation of a vehicle on business authorized by the
19 employer. Travel by a policeman, fireman, or a member of a first aid
20 or rescue squad, in responding to and returning from an emergency,
21 shall be deemed to be in the course of employment.

22 Employment shall also be deemed to commence when an employee
23 is traveling in a ridesharing arrangement between his or her place of
24 residence or terminal near such place and his or her place of
25 employment, if one of the following conditions is satisfied: the
26 vehicle used in the ridesharing arrangement is owned, leased or
27 contracted for by the employer, or the employee is required by the
28 employer to travel in a ridesharing arrangement as a condition of
29 employment.

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

44 "Disability permanent in quality and total in character" means a
45 physical or neuropsychiatric total permanent impairment caused by a
46 compensable accident or compensable occupational disease, where no

1 fundamental or marked improvement in such condition can be
2 reasonably expected.

3 Factors other than physical and neuropsychiatric impairments may
4 be considered in the determination of permanent total disability, where
5 such physical and neuropsychiatric impairments constitute at least 75%
6 or higher of total disability.

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

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

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

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

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

25 (a) for the first seven consecutive days of each period of disability;
26 except that if benefits shall be payable for three consecutive weeks
27 with respect to any period of disability commencing on or after
28 January 1, 1968, then benefits shall also be payable with respect to the
29 first seven days thereof;

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

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

34 (d) for any period during which the claimant is not under the care
35 of a legally licensed physician, dentist, optometrist, podiatrist,
36 practicing psychologist, or chiropractor, who, when requested by the
37 division, shall certify within the scope of the practitioner's practice, the
38 disability of the claimant, the probable duration thereof, and, where
39 applicable, the medical facts within the practitioner's knowledge;

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

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

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

46 (h) in a weekly amount which together with any remuneration the

1 claimant continues to receive from the employer would exceed regular
2 weekly wages immediately prior to disability;

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

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

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

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14 3. This act shall take effect immediately.

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17 STATEMENT

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19 This bill excludes illegal aliens from workers' compensation
20 coverage unless they were lawfully admitted for permanent residence
21 at the time the employment was performed, were lawfully present for
22 the purpose of performing the employment, or otherwise were
23 permanently residing in the United States under color of law at the
24 time the employment was performed (including aliens who were
25 lawfully present in the United States as a result of the application of
26 the provisions of section 203(a)(7) or section 212(d)(5) of the
27 Immigration and Nationality Act (8 U.S.C. § 1153(a)(7) or 8 U.S.C.
28 § 1128(d)(5), respectively).

29 The bill also provides that illegal aliens shall not be eligible to
30 receive benefits pursuant to the "Temporary Disability Benefits Law,"
31 P.L.1948, c.110 (C.43:21-25) if they are not eligible for benefits
32 pursuant to the "unemployment compensation law," R.S.43:21-1 et
33 seq. This bill is in response to the decision of Mateo Coria v. Board
34 of Review and National Fence Systems, No. A-5076-89-T5 (App. Div.
35 1991). In that case, the Appellate Division of the New Jersey Superior
36 Court held that the "Temporary Disability Benefits Law" does not
37 disqualify individuals for benefits based upon their status as illegal
38 aliens.

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