

[Second Reprint]
SENATE, No. 212

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators CONNORS, CIESLA and Matheussen

1 AN ACT concerning workers' compensation and temporary disability
2 benefits, ¹[and]²and² amending R.S.34:15-36 and P.L.1948, c.110
3 ²[and supplementing chapter 9 of Title 34 of the Revised Statutes]¹
4 ².

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

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSG committee amendments adopted January 22, 1996.

² Senate floor amendments adopted February 5, 1996.

1 of the Immigration and Nationality Act (8 U.S.C. §1153(a)(7) or 8
2 U.S.C. §1128(d)(5), respectively); and (3) casual employments, which
3 shall be defined, if in connection with the employer's business, as
4 employment the occasion for which arises by chance or is purely
5 accidental; or if not in connection with any business of the employer,
6 as employment not regular, periodic or recurring; provided, however,
7 that forest fire wardens and forest firefighters employed by the State
8 of New Jersey shall, in no event, be deemed casual employees.

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

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

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

1 "Disability permanent in quality and total in character" means a
2 physical or neuropsychiatric total permanent impairment caused by a
3 compensable accident or compensable occupational disease, where no
4 fundamental or marked improvement in such condition can be
5 reasonably expected.

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

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

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

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

21

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

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

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

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

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

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

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

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

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

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

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

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

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

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17 ²[¹3. (New section) Any employer who knowingly employs a
18 person who is an undocumented alien is guilty of a crime of the fourth
19 degree and, notwithstanding the provisions of N.J.S.2C:43-3 and
20 2C:43-6, shall be subject to a fine of up to \$10,000 and the cost of
21 any workers' compensation received by the undocumented alien for a
22 first offense, and a mandatory term of imprisonment of six months for
23 a second and each subsequent offense.

24 Actions against an employer shall be brought by the commissioner
25 or the Attorney General.¹²

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27 ¹[3.]²[^{4.}¹3.]² This act shall take effect immediately.

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