

CHAPTER 235**RULES OF THE DIVISION OF WORKERS' COMPENSATION****Authority**

N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b), (c) and 34:15-64.

Source and Effective Date

R.2001 d.118, effective March 9, 2001.
See: 33 N.J.R. 170(a), 33 N.J.R. 1113(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 235, Rules of the Division of Workers' Compensation, expires on September 5, 2006.
See: 38 N.J.R. 1521(a).

Chapter Historical Note

Chapter 235, Rules of the Division of Workers' Compensation, was adopted and became effective prior to September 1, 1969.

Chapter 235, Rules of the Division of Workers' Compensation, was repealed and a new Chapter 235, Rules of the Division of Workers' Compensation, was adopted as R.1986 d.144, effective May 5, 1986.
See: 17 N.J.R. 2081(a), 18 N.J.R. 987(a).

Subchapter 13, Surcharge Collection Procedures, was adopted as R.1988 d.586, effective December 19, 1988. See: 20 N.J.R. 2522(a), 20 N.J.R. 3139(a).

Subchapter 14, Uninsured Employer's Fund, was adopted as R.1990 d.338, effective July 2, 1990. See: 22 N.J.R. 3852(a), 22 N.J.R. 2023(a).

Pursuant to Executive Order No. 66(1978), Chapter 235, Rules of the Division of Workers' Compensation, was readopted by R.1991 d.275, effective May 3, 1991. See: 23 N.J.R. 834(a), 23 N.J.R. 1819(a).

Pursuant to Executive Order No. 66(1978), Chapter 235, Rules of the Division of Workers' Compensation, was readopted as R.1996 d.184, effective March 11, 1996. See: 28 N.J.R. 790(a), 28 N.J.R. 1859(a).

Subchapter 13, Enforcement and Collection of Non-Insurance Penalties, was adopted as new rules, and Subchapter 13, Surcharge Collection Procedures, was recodified to N.J.A.C. 12:235-11, and Subchapter 11, Standard Forms, was recodified to N.J.A.C. 12:235-14, and Subchapter 14, Uninsured Employer's Fund, was recodified to N.J.A.C. 12:235-12, and Subchapter 12, Documents Referred to in This Chapter, was repealed by R.1997 d.110, effective March 3, 1997. See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Petition for Rulemaking. See: 32 N.J.R. 4147(a), 32 N.J.R. 4314(b).

Pursuant to Executive Order No. 66(1978), Chapter 235, Rules of the Division of Workers' Compensation, was readopted as R.2001 d.118, effective March 9, 2001. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**12:235-1.1 Purpose; scope**

(a) The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.

(b) This chapter shall apply to all persons subject to Workers' Compensation Law, N.J.S.A. 34:15-7 et seq.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Title and citation repealed; purpose recodified from 1.3; scope recodified from 1.4.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (a), amended N.J.S.A. reference.

Case Notes

Dismissal of clarification of workers' compensation settlement due to lack of jurisdiction affirmed. *Basile v. Board of Education of the Borough of Roselle Park, Union County*, 97 N.J.A.R.2d (EDU) 429.

Off duty officer's injury at police gym non-compensable. *Hill v. Middletown Township*, 97 N.J.A.R.2d (WCC) 54.

Workers' Compensation Court lacked jurisdiction to act on cases where petitioners were covered under Longshore and Harbor Workers' Act. *Morin v. Universal Maritime*, 96 N.J.A.R.2d (WCC) 46.

Employee's continuing psychiatric treatment for pre-existing mental condition aggravated by work-related injury. *Flaherty v. Monmouth Sailing Center, Inc.*, 93 N.J.A.R.2d (WCC) 166.

Lumbosacral strain and left lumbar radiculopathy resulting from compensable accident equaled 40% of permanent partial disability, and claimant suffered from anxiety reaction to extent of 10% of permanent partial disability. *Wielgosz v. Ortho Diagnostics*, 93 N.J.A.R.2d (WCC) 163.

Mechanic was employee of owner of repair shop. *Breeden v. Dawson Automotive, Inc.*, 93 N.J.A.R.2d (WCC) 156.

Cancer and death were caused by exposure to carcinogens during the course of employment. *Rodriguez v. Sherwin Williams Paint Co.*, 93 N.J.A.R.2d (WCC) 153.

Receptionist/bookkeeper was entitled to psychiatric treatment, temporary disability benefits, and permanent disability as result of derisive and abusive language and behavior by owners. *Erhard v. Dee Rose Furniture of Brick Town Inc.*, 93 N.J.A.R.2d (WCC) 146.

Drywall finisher was employee rather than an independent contractor and accident arose out of and in course of employment. *Lopez v. P & B Partitions*, 93 N.J.A.R.2d (WCC) 143.

Temporarily disabled employee could not receive both unemployment benefits and disability compensation at the same time. *Khalil v. Revlon, Incorporated*, 93 N.J.A.R.2d (WCC) 135.

12:235-1.2 Construction

The rules contained in this chapter shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with if strict adherence would cause an injustice.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Authority deleted; construction recodified from 1.5.

Case Notes

Penalty for late filing of unemployment compensation returns was warranted on basis of postmark found on envelope. *Star Crest v. Department of Labor*, 95 N.J.A.R.2d (LBR) 17.

12:235-1.3 Certification in lieu of oath

(a) Claim petitions shall be notarized and filed under oath as set forth in N.J.S.A. 34:15-51 and 34:15-52 and in accordance with N.J.A.C. 12:235-3.1.

(b) Certifications in lieu of oath as provided in the New Jersey Rules of Court may be used for motions and any other supporting documents filed with the Court.

New Rule, R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Amended by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Designated paragraphs as (a) and (b); in (a), deleted "and answers" following "petitions" and added "and in accordance with N.J.A.C. 12:235-3.1"; in (b), inserted "New Jersey" preceding "Rules" and "supporting" preceding "documents".

12:235-1.4 Still and television camera and audio coverage of proceedings

(a) All requests for still and television camera and audio coverage of proceedings shall be forwarded to the Chief Judge.

(b) Such requests shall be considered in accordance with the "New Jersey Supreme Court Guidelines for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey," incorporated herein by references as amended and supplemented which may be obtained by requesting: Vicinage Operations Directive #10-03, October 8, 2003 from the Administrative Office of the Courts, Hughes Justice Complex, 25 West Market Street, PO Box 037, Trenton, New Jersey 08625-037.

New Rule, R.2004 d.263, effective July 6, 2004.

See: 36 N.J.R. 1350(a), 36 N.J.R. 3294(a).

12:235-1.5 (Reserved)**12:235-1.6 Maximum workers' compensation benefit rates**

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent

partial disability, and dependency is hereby promulgated as being \$691.00 per week.

(b) The maximum compensation shall be effective as to injuries occurring in the calendar year 2006.

Amended by R.1986 d.455, effective November 17, 1986.

See: 18 N.J.R. 1788(b), 18 N.J.R. 2331(d).

Benefit rates raised.

Amended by R.1987 d.472, effective November 16, 1987.

See: 19 N.J.R. 1624(a), 19 N.J.R. 2197(a).

Benefit rate raised from \$302.00 to \$320.00.

Amended by R.1988 d.536, effective November 7, 1988.

See: 20 N.J.R. 2188(a), 20 N.J.R. 2786(b).

Benefit rate raised from \$320.00 to \$342.00.

Amended by R.1989 d.563, effective November 6, 1989.

See: 21 N.J.R. 2700(a), 21 N.J.R. 3535(a).

Weekly benefit rates increased to \$370.00 for the 1990 calendar year.

Amended by R.1990 d.596, effective December 3, 1990.

See: 22 N.J.R. 2886(a), 22 N.J.R. 3628(a).

Weekly benefit rates increased to \$385.00 for the 1991 calendar year.

Repealed by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Workers' compensation benefits rates".

New Rule, R.1991 d.574, effective December 16, 1991.

See: 23 N.J.R. 2612(a), 23 N.J.R. 3818(a).

Amended by R.1992 d.467, effective November 16, 1992.

See: 24 N.J.R. 3015(a), 24 N.J.R. 4270(a).

Revised text.

Amended by R.1993 d.591, effective November 15, 1993.

See: 25 N.J.R. 3925(a), 25 N.J.R. 5352(b).

Amended by R.1994 d.553, effective November 7, 1994.

See: 26 N.J.R. 3594(b), 26 N.J.R. 4410(b).

Amended by R.1995 d.627, effective December 4, 1995.

See: 27 N.J.R. 3762(a), 27 N.J.R. 4898(b).

Amended by R.1996 d.516, effective November 4, 1996.

See: 28 N.J.R. 4077(a), 28 N.J.R. 4794(a).

Amended by R.1997 d.469, effective November 3, 1997.

See: 29 N.J.R. 3770(a), 29 N.J.R. 4704(a).

In (a), changed the benefit rate; and in (b), substituted "1998" for "1997".

Amended by R.1998 d.549, effective November 16, 1998.

See: 30 N.J.R. 3154(a), 30 N.J.R. 4054(a).

In (a), raised benefit rate for temporary disability from \$516.00 to \$539.00 per week; and in (b), changed calendar year to 1999.

Amended by R.1999 d.441, effective December 20, 1999.

See: 31 N.J.R. 3039(a), 31 N.J.R. 4286(a).

In (a), increased the maximum rate; and in (b), substituted a reference to 2000 for a reference to 1999.

Amended by R.2000 d.490, effective December 4, 2000.

See: 32 N.J.R. 3381(a), 32 N.J.R. 4259(b).

In (a), substituted "\$591.00" for "\$568.00"; and in (b), substituted "2001" for "2000".

Amended by R.2001 d.407, effective November 5, 2001.

See: 33 N.J.R. 2946(a), 33 N.J.R. 3752(b).

In (a), substituted "\$629.00" for "\$591.00"; in (b), substituted "2002" for "2001".

Amended by R.2002 d.392, effective December 2, 2002.

See: 34 N.J.R. 3057(a), 34 N.J.R. 4222(b).

In (a), substituted "\$638.00" for "\$629.00"; in (b), substituted "2003" for "2002".

Amended by R.2003 d.504, effective December 15, 2003.

See: 35 N.J.R. 4040(a), 35 N.J.R. 5547(a).

In (a), substituted "\$ 650.00" for "\$ 638.00"; in (b), substituted "2004" for "2003".

Amended by R.2004 d.474, effective December 20, 2004.

See: 36 N.J.R. 3987(a), 36 N.J.R. 5685(a).

In (a), substituted "\$666.00" for "\$650.00"; in (b), substituted "2005" for "2004".

Amended by R.2005 d.450, effective December 19, 2005.

See: 37 N.J.R. 3220(a), 37 N.J.R. 5045(b).

In (a), increased the benefit rate from \$666.00 to \$691.00; in (b), updated the calendar year from 2005 to 2006.

12:235-1.7 through 12:235-1.8 (Reserved)**SUBCHAPTER 2. DEFINITIONS****12:235-2.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Act” means Workers’ Compensation Law, N.J.S.A. 34:15-7 et seq.

“Chief Judge” means the Director/Chief Judge of the Division.

“Commissioner” means the Commissioner of Labor or his or her designee.

“Department” means the New Jersey Department of Labor.

“Director” means Director/Chief Judge of the Division.

“Division” means the Division of Workers’ Compensation, PO Box 381, Trenton, New Jersey 08625-0381.

“Judge” means Judge of Compensation.

“N.J.A.C.” means New Jersey Administrative Code.

“N.J.S.A.” means New Jersey Statutes Annotated.

“Respondent,” “employer” or “insurance carrier” are used interchangeably.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Definition of Chief Judge added; definition of “shall” deleted.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Added “Judge” and amended “Act”, “Chief Judge”, and “Director”.

Amended by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Added “Department” and deleted “Office of Safety Compliance”.

SUBCHAPTER 3. FORMAL CLAIMS**Subchapter Historical Note**

Subchapter 3, Conduct of Judges of Compensation, was repealed and Subchapter 3, Formal Claims, was recodified from Subchapter 5 by R.2002 d.340, effective October 21, 2002. See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d). See, also, section annotations.

12:235-3.1 Initial pleadings

(a) Claim petitions shall be subject to the following:

1. The claim petition may be filed electronically or on paper.

2. Claim petitions filed on paper shall be verified by the claimant and include the date of the signature and verification. The formal hearing process shall be initiated by the filing of a verified claim petition in duplicate with the central office of the Division within the time prescribed by law on a form prescribed by the Division. Claim petitions filed electronically shall follow the procedures in (c) below. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition any fee that may be awarded, may be reduced by 15 percent or \$200.00, whichever is greater.

3. Except as provided in section (a)2 above, all paper pleadings, motions and briefs shall be signed by the attorney of record, or the attorney’s associate or by the party if pro se. Signatures of a firm may be typed, followed by the signature of an attorney of the firm. Signatures on any duplicate original or carbon copy required to be filed may be typed. Every paper to be filed shall bear the date on which it was signed.

4. The signature of an attorney or party pro se constitutes a certification that the signatory has read the pleading or motion; that to the best of the signatory’s knowledge, information and belief there is good ground to support it.

5. Material allegations, if known, shall be stated. Material allegations include a description of the accident or occupational exposure, the nature of the injury, the date and place of the occurrence, the wage, compensation benefits provided to date, a description of all other claims made for this injury and all other information requested on the prescribed form.

6. Claim petitions by or on behalf of a worker seeking compensation for injury caused by an accident shall describe the date, place and description of the accident, the injury, the name and address of the employer, the name and address of the treating provider, the name of the compensation insurer and all other pertinent information required by the Act and these rules.

7. Claim petitions filed by dependents for benefits provided by N.J.S.A. 34:15-13 shall set forth the identity, address, relationship and date of birth of all dependents, the social security number of the decedent, the date and cause of death, whether compensation benefits were paid or claimed during the deceased’s lifetime, and the type and amount of benefits claimed. To the extent applicable, the petitioner shall comply with the information required for accidental injury claims or occupational disease claims. Multiple claims arising from one decedent shall be consolidated for disposition.

Award of disability benefits pending Second Injury Fund final hearing disposition was appropriate. *Reed v. Brookdale College*, 94 N.J.A.R.2d (WCC) 34.

12:235-5.3 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges eligibility for Fund benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or the applicant's attorney.

(b) The verified petition shall also include the following:

1. Name and address of petitioner;
2. Social security number of petitioner;
3. Age and date of birth of petitioner;
4. Marital status and educational background of petitioner;
5. A summary of petitioner's employment history;
6. A description of disabilities which existed prior to the date of the last compensable injury, and the date of onset of each;
7. The last compensable injury, indicating the date and a description of the occurrence; a description of the injury; brief description of the medical treatment for the injury; a description of permanent injury; name and address of employer and its insurance carrier; petitioner's wages and compensation rate; and a listing of all compensation paid to date for this injury;
8. An indication as to whether a third party tort claim has been made as to the last compensable injury, stating the name and address of the third party and the status of the claim;
9. A copy of all reports which are in the possession or control of the party filing the applications from all proposed expert witnesses and all treating physicians;
10. A description of all wage replacements presently being received by the petitioner;
11. References to all prior allowances and awards in workers' compensation matters concerning the petitioner, including the date of the accident and the extent of the allowance or award.

(c) Respondent shall provide all evaluative reports to the Second Injury Fund at the first motion hearing.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Amended by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Added (c).

Recodified from N.J.A.C. 12:235-7.4 by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Former N.J.A.C. 12:235-5.3, Other motions, recodified to N.J.A.C. 12:235-3.3.

Law Review and Journal Commentaries

Workers' Compensation. P.R. Chenoweth, 137 N.J.L.J. No. 16, 52 (1994).

Case Notes

Misrepresentation on employment application as to physical health did not bar recovery of benefits. *Akef v. BASF Corp.*, 275 N.J.Super. 30, 645 A.2d 158 (A.D.1994), certification granted 139 N.J. 186, 652 A.2d 174, affirmed 140 N.J. 408, 658 A.2d 1252.

SUBCHAPTER 6. COMMUTATION OF AWARD

Subchapter Historical Note

Subchapter 6, Commutation of Award, was recodified from N.J.A.C. 12:235-8 by R.2002 d.340, effective October 21, 2002. As part of R.2002 d.340, former 12:235-6.9, Solicitation of compensation claims, was repealed. See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

12:235-6.1 Application for commutation

(a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the Director.

(b) Applications for commutation of compensation shall be made only after the entry of an award.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

12:235-6.2 Application form for commutation

(a) The application for commutation shall be made on a form prescribed by the Division which shall include:

1. The applicant's name, address, and social security number;
2. The name and address of the employer;
3. The name, address, and file number of the employer's insurance carrier;
4. The date of award;
5. The Judge of Compensation and the place wherein the award was rendered;

6. The amount of the award;

7. The amount of balance due on the award;

8. The amount requested for commutation; applicant's marital, employment, and economic status;

9. The purpose(s) for which commutation is being requested; and

10. Such other information as prescribed by the Director.

(b) The application for commutation shall be under oath or affirmation of the applicant.

(c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in the application.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Inserted new (a)9 and recodified former (a)9 as (a)10.

12:235-6.3 Approval or disapproval of application for commutation

(a) Upon receipt of the application for commutation, the matter shall be forwarded for hearing to the Judge of Compensation who entered the award which is sought to be commuted.

1. If that Judge is not available, then any Judge in the vicinage may hear the application.

(b) After hearing the application, the Judge of Compensation shall enter an order either granting or denying the application and shall state the reasons therefor, pursuant to N.J.S.A. 34:15-25.

(c) The disbursement of all funds commuted shall be under the supervision of the Director.

(d) No award for total disability or dependency benefits shall be commuted.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Process for hearing of applications for commutation specified.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Added (d).

SUBCHAPTER 7. UNINSURED EMPLOYER'S FUND

Law Review and Journal Commentaries

Workers' Compensation. Steven P. Bann, 138 N.J.L.J. No. 2, 56 (1994).

12:235-7.1 Purpose; scope

(a) The Uninsured Employer's Fund (UEF) has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards of medical and temporary benefits entered against uninsured defaulting employers. This subchapter sets forth the procedures by which the UEF will be operated.

(b) Benefits for temporary disability and medical costs shall be provided in accordance with N.J.S.A. 34:15-120.1 et seq.

(c) The UEF shall be a party to proceedings under this subchapter. However, no judgment or order for the payment of benefits shall be entered against the UEF.

(d) The UEF may relax or dispense with requirements under the subchapter where appropriate and with the consent of the judge hearing the case.

(e) The UEF shall be provided a copy of a notice of appeal of any order or judgment in which the UEF is a party.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Judgments to be entered specifically against uninsured employers, not the Fund.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Amended by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Rewrote (c); added (d) and (e).

Recodified from N.J.A.C. 12:235-12.1 and amended by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

(b) The Director shall establish the vicinages in which the cases shall be heard.

(c) The Director shall establish the hearing dates and schedules for all uninsured employer cases.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Recodified from N.J.A.C. 12:235-12.5 by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

12:235-7.6 Payments from the UEF

(a) Payments from the UEF shall be made only in accordance with N.J.S.A. 34:15-120.4.

1. The UEF shall not reimburse governmental agencies for benefits paid to or on behalf of the petitioner except for benefits or expenses conditionally paid under the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.), New Jersey Medicaid reimbursement statute (N.J.S.A. 30:4D-7.1), and the Federal Medicare Secondary Provider Statute (42 U.S.C. § 1395y). Such reimbursements for medical expenses are subject to the limitations set forth in N.J.A.C. 12:235-7.4(e).

2. Payments under (a)1 above can be made only after a Judge of Compensation has ordered the uninsured employer to reimburse the agency or agencies making the conditional payments and the uninsured employer has defaulted on making such reimbursements within the time period set forth by N.J.S.A. 34:15-120.3 and 34:15-120.4.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Attorney fee provisions deleted; Fund payment provisions added.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Recodified from N.J.A.C. 12:235-12.6 by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Amended by R.2004 d.263, effective July 6, 2004.

See: 36 N.J.R. 1350(a), 36 N.J.R. 3294(a).

Designated existing text as (a) and added 1 and 2.

12:235-7.7 Attorney fees

(a) An attorney fee may be payable from the UEF to the petitioner's attorney when the petitioner is found eligible for UEF benefits by the Commissioner and shall exclude any fees awarded in association with permanent disability benefits.

(b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 834(a), 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Recodified from N.J.A.C. 12:235-12.7 by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Amended by R.2004 d.263, effective July 6, 2004.

See: 36 N.J.R. 1350(a), 36 N.J.R. 3294(a).

In (a), inserted "and shall exclude any fees awarded in association with permanent disability benefits" following "Commissioner"; deleted (b1).

12:235-7.8 Asbestos exposure claims under N.J.S.A.

34:15-33.3

(a) After due diligence, as defined in (b) below, an application may be filed with the UEF for compensation for asbestosis or asbestos-induced cancer, including mesothelioma, resulting in injury or death from exposure to asbestos where:

1. The workers' compensation insurance carrier of the employer, the employer, or the principals of the employer where the employee was last exposed cannot be located or the employee worked for more than one employer during the time the exposure to asbestos may reasonably be deemed to have taken place but the employer or employers where the employee was last exposed cannot reasonably be identified;

2. The claim petition was pending on or filed after January 14, 2004, and had not been concluded or dismissed prior to that date; and

3. Compensation is based on the last date of exposure if known, or if such date cannot be known, on an appropriate date established by the judge of workers' compensation, pursuant to N.J.S.A. 34:15-33.3(d).

(b) "Due diligence" shall be defined as a reasonable effort on the part of the petitioner or the petitioner's attorney, given the particular facts and circumstances of the case, to determine the identities of the carrier of the employer, the employer, and/or the principals of the employer where the employee was last exposed to asbestos, as well as the identities of any other carriers, employers, and/or principals of other employers that may be liable for benefits. Such efforts shall be listed in the certification required under N.J.A.C. 12:235-7.9 and shall include, unless explained under N.J.A.C. 12:235-7.9(b), the following:

1. Inquiries made to the Compensation Rating and Inspection Bureau to ascertain the workers' compensation insurance coverage of such employers;

2. Acquisition and review of the employee's Social Security earnings history for the period or periods during which the employee was exposed to asbestos;

3. Review of the employee's Federal and State income tax returns for the period or periods during which the employee was exposed to asbestos;

4. Acquisition and review of labor union records and/or pension plan records maintained for the employee

for the period or periods during which the employee was exposed to asbestos;

5. Review of the employee's medical records during and subsequent to the period during which the employee was exposed to asbestos;

6. Review of any personal records maintained by the employee with respect to employment for the period or periods during which the employee was exposed to asbestos; and

7. Any other efforts by the petitioner or the petitioner's attorney to establish due diligence.

(c) The UEF may without motion take the deposition of a petitioner and/or other individuals that may have information relevant to the application.

(d) In (a) above, the UEF shall have subrogation and lien rights including those provided by N.J.S.A. 34:15-33.3(b) and (c).

New Rule, R.2005 d.161, effective May 16, 2005.
See: 37 N.J.R. 385(c), 37 N.J.R. 1738(a).

12:235-7.9 Certification to the UEF, medical information in asbestos exposure cases

(a) In addition to the items specified at N.J.A.C. 12:235-7.4 for certification to the UEF, the petitioner shall, in asbestos exposure claims under N.J.A.C. 12:235-7.8, provide the following as part of such certification:

1. Identification of all third-party actions or latent disease claims filed by or on behalf of the employee based upon exposure(s) to asbestos, including the names of the defendants and the courts in which such actions are pending or were concluded;

2. Date of manifestation of the employee's asbestosis or asbestos-induced cancer;

3. Date of discovery, disclosure or diagnosis of the employee's asbestosis or asbestos-induced cancer and its relation to the ability of the employee to work;

4. Rate of progression of the employee's asbestosis or asbestos-induced cancer;

5. Date(s) the employee was impaired or unable to work as a result of the asbestosis or asbestos-induced cancer;

6. Date(s) of any lost time for medical treatments related to asbestosis or asbestos-induced cancer;

7. Nature of pre-existing pulmonary conditions, cancer-related conditions, exposure to any other chemicals, and/or smoking history;

8. Medical basis for concluding that there is a causal relationship between the employee's work and the employee's asbestosis or asbestos-induced cancer;

9. Medical conditions pre-existing the alleged exposure(s) to asbestos, including the nature of the pre-existing condition(s), the date(s) and type(s) or medical treatment received, and the names and addresses of all medical practitioners and providers involved in the diagnosis and treatment of such condition(s);

10. Details of efforts made under the provisions of N.J.A.C. 12:235-7.8(b);

11. Dates and nature of employment during which the employee was exposed to asbestos or during which the employee was exposed to conditions which aggravated or contributed to the asbestosis or asbestos-induced cancer. Such information should include, but not be limited to, any environmental information and data giving evidence of the level of exposure to asbestos and how such levels exceeded those encountered in the general environment; and

12. Nature and extent of any future treatment for the employee's asbestosis or asbestos-induced cancer.

(b) If any of these items of information are not provided to the UEF, the petitioner or the petitioner's attorney shall indicate that a request or search has established that such item or information is not available. The UEF may require such additional information and searches that are necessary and reasonable for review of the application.

(c) In addition to the information required under the provisions of this rule in (a) above and under N.J.A.C. 12:235-7.4, the petitioner shall provide the UEF with all medical records and information related to the asbestos exposure claim.

New Rule, R.2005 d.161, effective May 16, 2005.
See: 37 N.J.R. 385(c), 37 N.J.R. 1738(a).

SUBCHAPTER 8. DISCRIMINATION COMPLAINTS

Subchapter Historical Note

Subchapter 8, Discrimination Complaints, was recodified from N.J.A.C. 12:235-9 by R.2002 d.340, effective October 21, 2002. See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

12:235-8.1 Filing discrimination complaints

All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the Director.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

Case Notes

Employee claiming retaliatory discrimination by employer may pursue either judicial or administrative remedy. (citing former N.J.A.C. 12:235-11). *Lally v. Copygraphics*, 173 N.J.Super. 162, 413 A.2d 960 (App.Div.1980), affirmed 85 N.J. 668, 428 A.2d 1317 (1981).

Employee was not transferred to lower paying job in retaliation for his filing workers' compensation claim where claim was filed after transfer and transfer was effected due to employee's poor attendance record. *Dorsa v. Smurfit Plastic Packaging, Inc.*, 96 N.J.A.R.2d (LBR) 72.

Workers' compensation discrimination claim filed beyond two-year statute of limitations was dismissed as untimely. *Miller v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 96 N.J.A.R.2d (LBR) 65.

Employee was properly terminated for poor work performance, and not in retaliation for filing workers' compensation claim. *Bernard v. Port Authority of New York and New Jersey*, 96 N.J.A.R.2d (LBR) 50.

Employee was reasonably discharged due to excessive absenteeism, and not in retaliation for filing workers' compensation claim. *Montgomery v. Bayview Convalescent Center*, 96 N.J.A.R.2d (LBR) 31.

Employee had no retaliatory discharge claim where he failed to show compensable injury existed at time of discharge and where employer had cause for discharge. *Saddler v. Wood Dining Services, Inc.*, 96 N.J.A.R.2d (LBR) 19.

Warehouseman dismissed in retaliation for filing workers' compensation claim would be reinstated. *Paterson v. Lincoln Storage Warehouses*, 96 N.J.A.R.2d (LBR) 11.

12:235-8.2 Contents of discrimination complaints

(a) The complaint alleging discrimination shall be under the oath or affirmation of the complainant, and shall be on a form prescribed by the Division.

(b) The complaint alleging discrimination shall include the following:

1. Complainant's name, address, Social Security number, and claim petition number, if a claim for formal hearing has been filed;
2. The name and address of the insurance carrier for the employer;
3. The date of complainant's accident;
4. Complainant's occupation and wages;
5. Complainant's current employment and wages;
6. Complainant's occupational duties and indication as to whether he or she is able to perform those duties;
7. The date and reason for complainant's termination of employment;
8. The factual and legal reasons for alleging discrimination;
9. Such other information as requested by the Director.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Petition for rulemaking.

See: 33 N.J.R. 135(a).

12:235-8.3 Attachments to discrimination complaints

The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in the application.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

12:235-8.4 Investigation of discrimination complaints; appeal procedures

(a) Subject to the discretion of the Commissioner of Labor, the Director/Chief Judge shall supervise the investigation and review of discrimination complaints filed under N.J.S.A. 34:15-39.1.

(b) No discrimination complaint shall be accepted by the Division of Workers' Compensation unless filed with the Director/Chief Judge within 180 days of the date of the last act of alleged discrimination.

(c) Upon receipt of a sworn complaint alleging a violation of N.J.S.A. 34:15-39.1 the Division of Workers' Compensation shall transmit a copy of the complaint to the named employer within 14 days thereafter.

(d) The named employer shall file an answer to the complaint, under oath, with the Division of Workers' Compensation within 14 days of the employer's receipt of the complaint.

(e) The named employer, for good cause, may request from the Division of Workers' Compensation an additional period of not more than 30 days to file an answer to the discrimination charge.

(f) Upon receipt of the employer's answer, the Division will transmit a copy of the answer to the complainant. The complainant will be allowed 14 days to respond to the answer in writing. At the end of the 14 day period the record will be closed unless the Division requests additional submissions from the parties or allows additional time, for good cause shown, for the parties to respond.

(g) The Director/Chief Judge shall review the submission of the parties and determine if the complaint should be affirmed, dismissed or determined to be a contested case and forwarded to the Office of Administrative Law for hearing. The Director/Chief Judge shall render his or her decision within 90 days after the filing of a discrimination complaint or 30 days of the last evidentiary submission from the parties, whichever is later. If the complaint is affirmed, the decision will be transmitted to the Commissioner of Labor for imposition of penalties and such other relief authorized pursuant to N.J.S.A. 34:15-39.1 and 34:15-39.2.

(h) Any individual who disagrees with the decision of the Director may submit to the Division a written request for a formal hearing to be held in accordance with the Adminis-

trative Procedures Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 within 20 days from the date of the receipt of the Director's decision, by the party seeking the appeal.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Investigation to be forwarded in 90 days.

Amended by R.1993 d.51, effective January 19, 1993.

See: 24 N.J.R. 1684(a), 24 N.J.R. 3090(a), 25 N.J.R. 313(b).

Added new (b)-(d); revised section heading.

Amended by R.1994 d.431, effective August 15, 1994.

See: 26 N.J.R. 1591(b), 26 N.J.R. 3459(a).

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Rewrote (a) and (b); inserted new (c) through (g); recodified former (c) as (h); and in (h), amended time for requesting a formal hearing and inserted text "by the party seeking the appeal".

Petition for rulemaking.

See: 33 N.J.R. 135(a), 33 N.J.R. 331(a).

SUBCHAPTER 9. ASSIGNMENT AND SUPERVISION OF JUDGES

Subchapter Historical Note

Subchapter 9, Assignment and Supervision of Judges, was recodified from N.J.A.C. 12:235-4 by R.2002 d.340, effective October 21, 2002.
See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

12:235-9.1 Assignment of judges

It shall be within the sole discretion of the Director to assign judges throughout the State as he or she shall deem appropriate for the effective administration of the Division.

New Rule, R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Former section recodified to N.J.A.C. 12:235-4.2.

12:235-9.2 Assignment to supervisory positions

(a) It shall be within the power of the Director to ascertain the need to assign Judges to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts the Director may designate.

(b) The Director may at his or her discretion:

1. Determine the number of Judges needed to provide the necessary supervision; and

2. Appoint Judges of Compensation to supervisory positions in which the Judges shall serve at the pleasure of the Director.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Recodified from 12:235-4.1 and amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Former section recodified to N.J.A.C. 12:235-4.3.

12:235-9.3 Personnel functions

(a) The Supervising Judge of a particular district shall be directly responsible for the general conduct and performance of each Judge of Compensation in that district. The Supervising Judge shall be prepared to give a periodic performance evaluation of each Judge at the request of the Director.

(b) The Supervising Judge of a particular district shall be responsible for the orderly and prompt flow of work in that district.

(c) Subject to the approval of the Director, the Supervising Judge shall determine the composition of the daily calendar and shall designate the Judge of Compensation to be responsible for each calendar list. The Supervising Judge shall be responsible for all daily changes of scheduling for all hearing personnel within each district and be available to discuss particular scheduling problems with attorneys.

(d) Each Supervising Judge shall furnish statistical reports as required by the Director.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Recodified from 12:235-4.2 by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

SUBCHAPTER 10. CONDUCT OF JUDGES

Subchapter Historical Note

Subchapter 10, Accident Reports, was recodified as Subchapter 11 and Subchapter 10, Conduct of Judges, was adopted as new rules by R.2002 d.340, effective October 21, 2002. See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

12:235-10.1 A judge should perform the duties of judicial office impartially and diligently

(a) A judge shall be prompt in the performance of all duties, including, but not limited to:

1. Convening court proceedings at the time and in the manner established by the Director;
2. Completing final disposition of cases; and
3. Completing and forwarding to the Director at regular intervals performance records and other data relating to judicial performance in a manner established by the Director.

(b) The adjudicative responsibilities of a judge are as follows:

1. A judge should maintain professional competence and be faithful to and comply with the law, regulations and Division procedures. A judge should not be influenced by partisan interest, public opinion, or fear of criticism.

2. A judge should maintain order and decorum in judicial proceedings.

3. A judge should be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

4. A judge should be impartial and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability.

5. A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability against parties, witnesses, counsel, or others. This section does not preclude legitimate advocacy when race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability, or other similar factors are issues in the proceeding.

6. A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider substantive ex parte communications concerning a pending or impending proceeding. The proscription against communications concerning a proceeding includes communica-

tions from lawyers, law teachers, and other persons who are participants in the proceeding, except to the limited extent permitted. This does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.

7. A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control.

8. A judge should permit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court as modified by these rules of the Division of Workers' Compensation and subject to the restrictions contained therein. See Supreme Guidelines For Still and Television Camera and Audio Proceedings in the Courts of New Jersey, New Jersey Court Rules 1999.

(c) The administrative responsibilities of a judge are as follows:

1. A judge should diligently discharge the administrative responsibilities of the office without bias or prejudice, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

2. A judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

3. A judge has the following disciplinary responsibilities:

- i. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of these rules should take appropriate action. A judge having knowledge that another judge has committed a violation of these rules that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority;

- ii. A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority; and

- iii. Acts of a judge in the discharge of disciplinary responsibilities required or permitted are part of a judge's judicial duties.

12:235-10.2 Courtesy and civility

(a) A judge shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) A judge shall require, so far as their power extends, that those individuals assisting the judge in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a judge shall be free from impropriety and the appearance of impropriety. A judge's personal demeanor, not only on the bench and in the performance of a judge's judicial duties, but also in their everyday life, shall be beyond reproach. A judge shall be temperate, attentive, patient, and impartial.

12:235-10.3 Conduct of attorneys

(a) Attorneys shall conduct themselves in a professional manner at all times, as defined by the Rules of Professional Conduct.

(b) A judge shall report to the Supervising Judge and Director all instances of attorney conduct which violates the Rules of Professional Conduct.

12:235-10.4 Conduct of witnesses and others having business before the court

(a) Witnesses and others having business before the court shall conduct themselves in a proper manner.

(b) A judge shall report to the Supervising Judge and Director all instances of improper, unethical or illegal practices by any expert witness, interpreter, court reporter, or party before the judge.

12:235-10.5 A judge should uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this subchapter should be construed and applied to further that objective.

12:235-10.6 A judge should avoid impropriety and the appearance of impropriety in all activities

(a) A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(b) A judge should not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify as a character witness.

(c) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

12:235-10.7 Disqualification of a judge

(a) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including, but not limited to, instances where:

1. The judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of disputed evidentiary facts concerning the proceeding;

2. The judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

3. The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be affected by the outcome of the proceeding; or

4. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

- i. Is a party to the proceeding, or an officer, director, or trustee of a party;

- ii. Is acting as, or is in the employ of or associated in the practice of law with, a lawyer in the proceeding;

- iii. Is known by the judge to have an interest that could be affected by the outcome of the proceeding; or

- iv. Is to the judge's knowledge likely to be a witness in the proceeding.

(b) A judge should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of his or her spouse and dependent children.

(c) For the purposes of this section:

1. The degree of relationship is calculated according to the common law;

SUBCHAPTER 11. ACCIDENT REPORTS

Subchapter Historical Note

Subchapter 11, Accident Reports, was recodified from Subchapter 10. As a part of this recodification, former 12:235-10.2 through 12:235-10.6 were repealed by R.2002 d.340, effective October 21, 2002. See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

12:235-11.1 Employer's first notice of accidental injury or occupational disease

(a) Every employer subject to N.J.S.A. 34:15-96 shall file a first notice of accidental injury or occupational disease under the procedures set forth in (b) below when:

1. The injury causes a loss of time from regular duties beyond the working day or shift on which the accident occurred; or
2. Medical treatment beyond ordinary first aid is required; or
3. Occupational disease exists whether or not time is lost.

(b) Upon the happening of an accident or the occurrence of any occupational disease, an employer who has insurance coverage or utilizes a third party administrator shall promptly furnish the insurance carrier or the third party administrator with accident or occupational disease information.

(c) Within three weeks after an accident or upon knowledge of the occurrence of an occupational disease, every insurance carrier, third party administrator, statutory non-insured employer, including the State, counties, municipalities and school districts, and duly authorized self-insured employer not utilizing a third party administrator shall file a report designated as "first notice of accident" in electronic data interchange media with the Division of Workers' Compensation through the Compensation and Rating and Inspection Bureau in a format prescribed by the Compensation and Rating and Inspection Bureau. When filed by an insurance carrier or third party administrator, the report shall also be sent to the employer. If the employer disagrees with the report, the employer may prepare and sign an amended report and file the amended report with the insurance carrier or third party administrator. The amended report must then be filed electronically with the Division through the Compensation Rating and Inspection Bureau.

(d) The Compensation Rating and Inspection Bureau shall insure the information received pursuant to this subchapter is readily available to the Division or any person

authorized by the Commissioner of Labor pursuant to N.J.S.A. 34:15-99.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (d), inserted reference to electronic transmission.

Recodified from N.J.A.C. 12:235-10.1 and amended by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Rewrote the section. Former N.J.A.C. 12:235-11.1, Purpose and scope, recodified to N.J.A.C. 12:235-12.1.

12:235-11.2 Employer's final report of accidental injury or occupational disease

(a) Not more than 26 weeks after the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer learns that an employee has recovered so as to resume work or has reached maximum medical improvement prior to resumption of work, the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer shall prepare a final report in electronic data interchange media with the Division through the Compensation Rating and Inspection Bureau in a format prescribed by the Compensation Rating and Inspection Bureau. A benefits status letter will be sent to the employee by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer which shall contain the information filed with Division and Compensation Rating and Inspection Bureau.

(b) If the employee disagrees with the benefits status letter, the employee may contact the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer directly or write to the Division pursuant to instructions on the New Jersey Benefits Status Letter. Any changes to the report shall be filed by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer in the same manner as the original report under (a) above.

New Rule, R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Former N.J.A.C. 12:235-11.2, Definitions, recodified to N.J.A.C. 12:235-12.2.

12:235-11.3 Penalty for noncompliance

(a) Every employer, insurer, third party administrator or other person who fails to comply with the terms of this subchapter shall be liable for a penalty of \$10.00 for the first offense, \$25.00 for the second offense and \$50.00 for the third and subsequent offenses. Violations under this section include, but are not limited to, a failure to file a required report, a failure to file a report electronically, a failure to supply information to another party and a failure to file a complete and accurate report.

(b) A person or entity who receives notice of a penalty assessment may request in writing a review of the penalty

assessment within 20 days of the notice of penalty assessment. Such request must include the reasons and basis for a dismissal or waiver of the penalty.

New Rule, R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Former N.J.A.C. 12:235-11.3, Reporting compensation paid, recodified to N.J.A.C. 12:235-12.3.

SUBCHAPTER 12. SURCHARGE COLLECTION PROCEDURES

12:235-12.1 Purpose and scope

(a) The purpose of this subchapter is to establish surcharge collection procedures to fund the Uninsured Employers' Fund and the Second Injury Fund.

(b) The surcharges shall be levied against all workers' compensation and employer's liability insurance policyholders and self-insured employers.

Recodified from N.J.A.C. 12:235-11.1 by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Former N.J.A.C. 12:235-12.1, Purpose; scope, recodified to N.J.A.C. 12:235-7.1.

12:235-12.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Department" means the New Jersey Department of Labor.

"Director" means the Director/Chief Judge of the Division of Workers' Compensation.

"Earned premium" means the portion of the standard premium that was earned on a pro-rata basis of the policy term. As of January 1, 1999, the earned premium shall be defined as the portion of modified premium that was earned on a pro-rata basis of the policy term.

"Insurer" means a domestic, foreign, or alien mutual association or stock company writing workers' compensation or employer's liability insurance on risks located in this State who is subject to premium taxes pursuant to N.J.S.A. 54:18A-1 et seq.

"Modified premium" means the earned premium after application of any experience modification and prior to the application of an approved managed care premium reduction, a premium reduction in consideration of the New Jersey Construction Classification Premium Adjustment Program, the expense constant, surcharges, premium discount, retrospective rating plans, or premium reductions for deductible coverages.

"Policyholder" means a holder of a policy of workers' compensation and employer's liability insurance issued by an insurer, exclusive of any workers' compensation endorsement requirement pursuant to N.J.S.A. 17:36-5.29.

"Report of compensation paid" is a report of the total amount of workers' compensation paid pursuant to N.J.S.A. 34:15-1 et seq., adjusted for the amounts paid for funeral expenses and for the compromise of disputed claims pursuant to N.J.S.A. 34:15-20.

"Second Injury Fund" means a fund established pursuant to N.J.S.A. 34:15-94 which is designed to provide funds for workers who have experienced two disability injuries.

"Self-insured employer" means an employer which is authorized to self-insure for workers' compensation or employer's liability pursuant to N.J.S.A. 34:15-77.

"Standard premium" means the premium earned after application of any experience modification and prior to the application of the expense constant, premium discounts, retrospective rating plans or premium reductions for deductible coverages.

"Uninsured Employer's Fund" means a fund to provide for the payment of awards against uninsured defaulting employers pursuant to N.J.S.A. 34:15-120.1 et seq.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Amended "Director" and "Standard premium".

Amended by R.1998 d.575, effective December 7, 1998.

See: 30 N.J.R. 3374(a), 30 N.J.R. 4244(a).

In "Earned premium" added a second sentence; and inserted "Modified premium".

Recodified from N.J.A.C. 12:235-11.2 by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Former N.J.A.C. 12:235-12.2, Filing notice of an uninsured claim; personal service; third-party joinder, recodified to N.J.A.C. 12:235-7.2.

12:235-12.3 Reporting compensation paid

(a) Report forms for the reporting of compensation paid shall be mailed by the Department to the respective insurers or self-insured employers by June 15 of each calendar year.

(b) Insurers and self-insured employers shall file the report of compensation paid for the calendar period July 1 to June 30 with the Department by July 31 following the end of the report year to be filed.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Recodified from N.J.A.C. 12:235-11.3 by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Former N.J.A.C. 12:235-12.3, Certification, recodified to N.J.A.C. 12:235-7.3.