

**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).

**Executive Order No. 66(1978) Expiration Date**

Chapter 235, Rules of the Division of Workers Compensation, expires on March 9, 2006.

**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Chapter 235, Rules of the Division of Workers' Compensation, was repealed and a new Chapter 235, Rules of the Division of Workers' Compensation, was adopted as R.1986 d.144, effective May 5, 1986.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Employer's Fund, was recodified to N.J.A.C. 12:235-12, and Subchapter 12, Documents Referred to in This Chapter, was repealed by R.1997 d.110, effective March 3, 1997.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.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

- 12:235-1.1 Purpose; scope
- 12:235-1.2 Construction
- 12:235-1.3 Certification in lieu of oath
- 12:235-1.4 Still and television camera and audio coverage of proceedings
- 12:235-1.5 (Reserved)
- 12:235-1.6 Maximum workers' compensation benefit rates
- 12:235-1.7 through 12:235-1.8 (Reserved)

**SUBCHAPTER 2. DEFINITIONS**

- 12:235-2.1 Definitions

**SUBCHAPTER 3. FORMAL CLAIMS**

- 12:235-3.1 Initial pleadings
- 12:235-3.2 Motions for temporary disability and/or medical benefits
- 12:235-3.3 Other motions
- 12:235-3.4 Third-party joinder by respondent
- 12:235-3.5 Conditions allowable for discovery
- 12:235-3.6 Discovery
- 12:235-3.7 Testimony of injured or ill petitioner by depositions
- 12:235-3.8 Certification of pre-existing conditions
- 12:235-3.9 Pretrial conference
- 12:235-3.10 Conduct of formal hearings
- 12:235-3.11 Orders approving settlement reached pursuant to N.J.S.A. 34:15-20
- 12:235-3.12 Notice of appeal
- 12:235-3.13 Interpreters
- 12:235-3.14 Enforcement
- 12:235-3.15 Hearing to request a stay of the order or judgment

**SUBCHAPTER 4. INFORMAL HEARINGS**

- 12:235-4.1 Purpose of informal hearings
- 12:235-4.2 Filing of an application for an informal hearing
- 12:235-4.3 Contents of the application
- 12:235-4.4 Scheduling of informal hearings
- 12:235-4.5 Attendance at hearing
- 12:235-4.6 Representative of employer or carrier
- 12:235-4.7 Registration of representatives for employers or carriers
- 12:235-4.8 Representation of claimant
- 12:235-4.9 Procedure where employer has no insurance
- 12:235-4.10 Allowance of attorney fees
- 12:235-4.11 Commencement of informal hearings
- 12:235-4.12 Determination of issues
- 12:235-4.13 Acceptance of settlement recommendations and entry of informal award
- 12:235-4.14 Fee for service of physician
- 12:235-4.15 Denial of compensability or refusal to accept findings of informal hearings
- 12:235-4.16 Failure of employer or carrier to appear
- 12:235-4.17 Adjournment
- 12:235-4.18 (Reserved)

**SUBCHAPTER 5. SECOND INJURY FUND CASES**

- 12:235-5.1 General procedure
- 12:235-5.2 Payment of benefits
- 12:235-5.3 Filing

**SUBCHAPTER 6. COMMUTATION OF AWARD**

- 12:235-6.1 Application for commutation
- 12:235-6.2 Application form for commutation
- 12:235-6.3 Approval or disapproval of application for commutation

**SUBCHAPTER 7. UNINSURED EMPLOYER'S FUND**

- 12:235-7.1 Purpose; scope
- 12:235-7.2 Filing notice of an uninsured claim; personal service; third-party joinder
- 12:235-7.3 Certification
- 12:235-7.4 Medical bills; physician's examination
- 12:235-7.5 Assignment of cases; schedules
- 12:235-7.6 Payments from the UEF
- 12:235-7.7 Attorney fees

**SUBCHAPTER 8. DISCRIMINATION COMPLAINTS**

- 12:235-8.1 Filing discrimination complaints
- 12:235-8.2 Contents of discrimination complaints
- 12:235-8.3 Attachments to discrimination complaints

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

## SUBCHAPTER 9. ASSIGNMENT AND SUPERVISION OF JUDGES

- 12:235-9.1 Assignment of judges  
 12:235-9.2 Assignment to supervisory positions  
 12:235-9.3 Personnel functions

## SUBCHAPTER 10. CONDUCT OF JUDGES

- 12:235-10.1 A judge should perform the duties of judicial office impartially and diligently  
 12:235-10.2 Courtesy and civility  
 12:235-10.3 Conduct of attorneys  
 12:235-10.4 Conduct of witnesses and others having business before the court  
 12:235-10.5 A judge should uphold the integrity and independence of the judiciary  
 12:235-10.6 A judge should avoid impropriety and the appearance of impropriety in all activities  
 12:235-10.7 Disqualification of a judge  
 12:235-10.8 A judge may engage in activities to improve the law, the legal system, and the administration of justice  
 12:235-10.9 A judge shall so conduct the judge's personal activities as to minimize the risk of conflict with judicial obligations  
 12:235-10.10 Other compensation  
 12:235-10.11 A judge shall refrain from political activity  
 12:235-10.12 Medical reports  
 12:235-10.13 Causes for discipline or removal  
 12:235-10.14 Forms of discipline  
 12:235-10.15 Minor discipline  
 12:235-10.16 Major discipline  
 12:235-10.17 Establishment of Commission on Judicial Performance  
 12:235-10.18 Initial review by the Commission  
 12:235-10.19 Evidentiary review by the Commission  
 12:235-10.20 Recommendations of the Commission  
 12:235-10.21 Final hearing  
 12:235-10.22 Confidentiality  
 12:235-10.23 Judicial independence and discipline process

## SUBCHAPTER 11. ACCIDENT REPORTS

- 12:235-11.1 Employer's first notice of accidental injury or occupational disease  
 12:235-11.2 Employer's final report of accidental injury or occupational disease  
 12:235-11.3 Penalty for noncompliance

## SUBCHAPTER 12. SURCHARGE COLLECTION PROCEDURES

- 12:235-12.1 Purpose and scope  
 12:235-12.2 Definitions  
 12:235-12.3 Reporting compensation paid  
 12:235-12.4 Calculation and notification of surcharge  
 12:235-12.5 Surcharge collection procedure  
 12:235-12.6 Verification and audit procedures  
 12:235-12.7 Earned premium notification  
 12:235-12.8 Forms  
 12:235-12.9 Penalties

## SUBCHAPTER 13. ENFORCEMENT AND COLLECTION OF NON-INSURANCE PENALTIES

- 12:235-13.1 General  
 12:235-13.2 Notice and demand for proof of coverage  
 12:235-13.3 Acceptable proofs  
 12:235-13.4 Failure to respond  
 12:235-13.5 Hearings  
 12:235-13.6 Payments

## SUBCHAPTER 14. STANDARD FORMS

- 12:235-14.1 Listing of forms

12:235-14.2 Sample forms

## 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.

(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).

## 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 Warehouse*, 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 Administrative 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**