

CHAPTER 235
RULES OF THE DIVISION OF
WORKERS' COMPENSATION

Authority

N.J.S.A. 34:1-20, 34:1A-3(c), 34:1A-12(b), 34:1A-12(c),
34:15-64 and 43:21-25 et seq., specifically, 43:21-65.

Source and Effective Date

R.2006 d.305, effective July 28, 2006.
See: 38 N.J.R. 1521(a), 38 N.J.R. 3308(b).

Chapter Expiration Date

Chapter 235, Rules of the Division of Workers' Compensation, expires on July 28, 2011.

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Chapter 235, Rules of the Division of Workers' Compensation, was repealed and a new Chapter 235, Rules of the Division of Workers' Compensation, was adopted as R.1986 d.144, effective May 5, 1986.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Employer's Fund, was recodified to N.J.A.C. 12:235-12, and Subchapter 12, Documents Referred to in This Chapter, was repealed by R.1997 d.110, effective March 3, 1997.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: 33 N.J.R. 170(a), 33 N.J.R. 1113(a).

Subchapter 3, Conduct of Judges of Compensation, was repealed and Subchapter 3, Formal Claims, was recodified from Subchapter 5; Subchapter 4, Informal Hearings, was recodified from Subchapter 6; Subchapter 5, Second Injury Fund Cases, was recodified from Subchapter 7; Subchapter 6, Commutation of Award, was recodified from Subchapter 8; Subchapter 7, Uninsured Employer's Fund, was recodified from Subchapter 12; Subchapter 8, Discrimination Complaints, was recodified from Subchapter 9; Subchapter 9, Assignment and Supervision of Judges, was recodified from Subchapter 4; Subchapter 10, Conduct of Judges, was adopted as new rules; Subchapter 11, Accident Reports, was recodified from Subchapter 10; and Subchapter 12, Surcharge Collection Procedures, was recodified from Subchapter 11, 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).

Chapter 235, Rules of the Division of Workers' Compensation, was readopted as R.2006 d.305, effective July 28, 2006. See: Source and Effective Date. See, also, section annotations.

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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.

(b) All proofs of coverage submitted in the form of insurance certificate or agent affidavit are subject to verification by the Division with the named mutual association or stock company. Proofs of coverage submitted in the form of certificates of self-insurance shall likewise be subject to verification with the Department of Insurance.

(c) Where proofs of coverage as submitted by the business entity are found to be invalid on their face or through the process of verification, a second notice shall be issued to the business entity stating such findings and the current amount of assessment to be imposed, and providing procedures for the business entity to request a hearing on the allegation within 20 calendar days following the date of the second notice.

(d) All notices prescribed hereunder shall be served by the Division by certified and regular mail and shall be deemed satisfactory if not returned as undeliverable.

12:235-13.4 Failure to respond

Where the business entity fails to respond to either the initial or second notice and demand for proof of coverage within the period allowed, the amount of assessment stated in the last notice issued to the business entity shall become the final administrative order with respect to the imposition of such penalties.

12:235-13.5 Hearings

(a) A hearing will be conducted by the Director/Chief Judge or designee if requested pursuant to N.J.A.C. 12:235-13.2.

(b) The employer shall have the opportunity to present any and all relevant evidence but the Director/Chief Judge or designee conducting the hearing shall not be bound by the Rules of Evidence.

(c) Penalties assessed against an employer will be dismissed upon a finding by a preponderance of the credible proof that the requirements of Article 5 and related sections of the Workers' Compensation Act were met as of the date of the issuance of the initial notice of violation.

(d) If, upon finding that the employer was in violation of N.J.S.A. 34:15-7 et seq., a portion or all of the administrative penalty assessed in the initial notice of violation may be abated by the Director/Chief Judge or designee based on the following factors:

1. Length of time the employer was without workers' compensation coverage;
2. An occurrence of a compensable injury while the employer was uninsured;
3. Past history of violations by the employer or an entity in which the violator was an owner, officer or principal shareholder;

4. Good faith of the employer;
5. Size of the employer's business; and
6. Any other material factors which the Director/Chief Judge or designee deems appropriate.

(e) If, as the result of a hearing, pursuant to this subchapter, an initial penalty amount is abated in part upon condition of timely payment, in whole or by installment, said employer shall make payment in strict accordance with the schedule of payments set forth by the Director/Chief Judge or designee. If the conditions of the penalty abatement order are not met, the abatement shall, upon further order of the Director/Chief Judge or designee, and without further hearing, be rescinded and the full amount of the initial assessment shall be due and owing.

(f) The Director/Chief Judge or designee shall issue a final administrative order within a reasonable time following the conclusion of the hearing.

12:235-13.6 Payments

(a) All penalties shall be paid in compliance with the final administrative order. Failure to pay such penalties when due shall result in a judgment being obtained in a court of competent jurisdiction.

(b) All sums shall be made payable to the "Uninsured Employers Fund" in the form of a certified check, money order or such other form authorized by the Director/Chief Judge or designee.

SUBCHAPTER 14. STANDARD FORMS

12:235-14.1 Listing of forms

(a) Listed below are the titles and numerical designations of the standard forms utilized for workers' compensation:

1. Employee Claim Petition, WC 365;
2. Dependency Claim Petition, WC 366;
3. Application for Review or Modification of Formal Award, WC 368;
4. Notice of Motion for Temporary and/or Medical Disability Benefits, WC 101;
5. Respondent's Answer to Claim Petition, WC 367;
6. Respondent's Answer to Dependency Claim Petition, WC 171;
7. Answer to Application for Review or Modification of Formal Award, WC 369;
8. Answering Statement to Motion for Temporary and Medical Benefits, WC 102;

9. Standard Respondent's Interrogatories: Occupational Diseases, WC 22;

10. Standard Petitioner's Interrogatories: Occupational Diseases, WC 23;

11. Pre-Trial Memorandum, WC(DO) 31;

12. Order Approving Settlement WC(DO) 370;

13. No Insurance Case, WC(DO) 339;

14. Bench Referral from Division of Workers' Compensation to New Jersey Division of Vocational Rehabilitation Services;

15. Application for Informal Hearing, WC(CF)-66;

16. Central Office Record of Informal Proceedings, WC(CF)-11;

17. Second Injury Fund Verified Petition (SCF-161);

18. Decision of Eligibility, WC-48;

19. Application for Commutation, WC(1)-60;

20. Decision of Dismissal, WC-47;

21. Discrimination Complaint SCF 4;

22. Employer's First Report of Accidental Injury of Occupational Illness, L&I 1;

23. Employer's First Report to Division of Workers' Compensation of Accidental Injury or Occupational Disease, WC-1;

24. Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case, WC-2;

25. Informational Brochure on Informal Proceedings.

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

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

Amended form references throughout section; rewrote (a)10.

Amended by R.1998 d.152, effective March 16, 1998.

See: 30 N.J.R. 18(a), 30 N.J.R. 1047(b).

In (a)4, substituted "and/or Medical Disability" for "and Medical"; in (a)9, added ", WC 22"; and in (a)10, added ", WC 23".

Amended by R.1998 d.550, effective November 16, 1998.

See: 30 N.J.R. 3155(a), 30 N.J.R. 4055(a).

In (a), deleted "Application and" and inserted "(SCF-161);" in 17.

Amended by R.1998 d.576, effective December 7, 1998.

See: 30 N.J.R. 3588(a), 30 N.J.R. 4244(b).

In (a), added 30.

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

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

In (a), rewrote 25 and deleted 26 through 30.

12:235-14.2 Sample forms

Samples of the standard forms listed in N.J.A.C. 12:235-14.1 follow:

OFFICE OF ADMINISTRATIVE LAW NOTE: The Division of Workers' Compensation submitted 29 sample forms as part of R.1997 d.110. These forms are not reproduced herein but may be inspected at:

Office of Administrative Law

Building 9

Quakerbridge Plaza, Quakerbridge Road

PO Box 049

Trenton, NJ 08625-0049

and

Department of Labor

Division of Workers' Compensation

Sixth Floor

John Fitch Plaza

PO Box 399

Trenton, NJ 08625-0399

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.1998 d.152, effective March 16, 1998.

See: 30 N.J.R. 18(a), 30 N.J.R. 1047(b).

Administrative correction.

See: 30 N.J.R. 1417(b).

Amended by R.1998 d.550, effective November 16, 1998.

See: 30 N.J.R. 3155(a), 30 N.J.R. 4055(a).

Updated the addresses.

Amended by R.2000 d.260, effective June 19, 2000.

See: 32 N.J.R. 1144(a), 32 N.J.R. 2245(a).