

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 34:16-64.

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Chapter 235, Rules of the Division of Workers' Compensation, was repealed and a new Chapter 235, Rules of the Division of Workers' Compensation, was adopted as R.1986 d.144, effective May 5, 1986.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Employer's Fund, was recodified to N.J.A.C. 12:235-12, and Subchapter 12, Documents Referred to in This Chapter, was repealed by R.1997 d.110, effective March 3, 1997.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

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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

Claim petitions and answers shall be notarized and filed under oath as set forth in N.J.S.A. 34:15-51 and 34:15-52. Certifications in lieu of oath as provided in the 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).

12:235-1.4 through 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 \$591.00 per week.

(b) The maximum compensation shall be effective as to injuries occurring in the calendar year 2001.

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".

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.

“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.

“Office of Safety Compliance” means the Office of Safety Compliance, in the Division of Workplace Standards, New Jersey Department of Labor, PO Box 386, Trenton, New Jersey 08625-0386.

“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”.

SUBCHAPTER 3. CONDUCT OF JUDGES OF COMPENSATION

12:235-3.1 Promptness

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

1. Convening hearings 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.

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

Manner of hearing and submission of data to be specified by the Director.

12:235-3.2 Courtesy and civility

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

(b) Judges of Compensation 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 of Compensation shall be free from impropriety and the appearance of impropriety. Their personal demeanor, not only on the bench and in the performance of their judicial duties, but also in their everyday life, shall be beyond reproach. Judges shall be temperate, attentive, patient, and impartial.

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.

12:235-3.3 Conduct of attorneys

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

(b) Judges of Compensation shall report to the Supervising Judge and Director all instances of attorney conduct in contravention of the Rules of Professional Conduct.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Reference to Rules of Professional Conduct added.

12:235-3.4 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) Judges of Compensation 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.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Conduct of witnesses and others specified.

12:235-3.5 Kinship or influence: disqualification

(a) Judges of Compensation shall not act upon or hear a controversy, or a portion thereof where a relative of the Judge or the Judge’s spouse within the third degree of relationship to either is a party before the Judge.

(b) If a relative of the Judge or the Judge's spouse within the third degree of relationship to either, former partner, business associate, or personal friend is scheduled to appear before a Judge of Compensation, the Judge shall disqualify himself or herself from hearing the matter and promptly notify the Supervising Judge and the Director for rescheduling of the matter.

(c) Judges of Compensation shall disqualify themselves from all other matters in which they are unable to conduct a fair and unbiased 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.

12:235-3.6 Conflict of interest

(a) Judges of Compensation shall not:

1. Engage in any activity which requires the performance of duties inconsistent with their position of authority; or
2. Incur any obligation, pecuniary or otherwise, which would in any way interfere or appear to interfere with their duty to effectuate the proper administration of their official functions.