

**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) and (c); and 34:15-64.

**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Chapter 235, Rules of the Division of Workers' Compensation, was repealed and a new Chapter 235, Rules of the Division of Workers' Compensation, was adopted as R.1986 d.144, effective May 5, 1986.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Employer's Fund, was recodified to N.J.A.C. 12:235-12, and Subchapter 12, Documents Referred to in This Chapter, was repealed by R.1997 d.110, effective March 3, 1997.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Subchapter 3, Conduct of Judges of Compensation, was repealed and Subchapter 3, Formal Claims, was recodified from Subchapter 5; Subchapter 4, Informal Hearings, was recodified from Subchapter 6; Subchapter 5, Second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.

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.

Recodified from N.J.A.C. 12:235-5.13 and amended by R.2000 d.128, effective March 20, 2000.

See: 31 N.J.R. 3916(a), 32 N.J.R. 1028(a).

In (b), substituted a reference to N.J.A.C. 12:235-5.13 for 12:235-5.12(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 (a) and (b); added (d).

#### **12:235-3.15 Hearing to request a stay of the order or judgment**

A request for a stay of an order or judgment shall be heard on the record when a party requests a hearing on the stay.

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).

### **SUBCHAPTER 4. INFORMAL HEARINGS**

#### **12:235-4.1 Purpose of informal hearings**

(a) The informal hearing process is a service provided by the Division to effectuate the amicable adjustment of controversies between injured workers and their employers involving their respective rights under the Act.

(b) The informal hearing procedure is not expressly contained within the provisions of the Act.

(c) The filing of an application for an informal hearing will not toll the time limitation periods for the filing of a formal claim petition or a dependency claim petition as provided by the Act.

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 12:235-6.1 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 12:235-4.1, Assignment of judges, recodified to 12:235-9.1.

#### **12:235-4.2 Filing of an application for an informal hearing**

(a) The informal process is initiated by the filing of an application in duplicate with the Division.

(b) The filing for informal hearing may be made by any party of interest including the injured worker, petitioner's

attorney, the employer, the employer's representative or insurance carrier, or the Division.

(c) The application shall be filed within the time periods prescribed for the filing of a formal claim petition.

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 N.J.A.C. 12:235-6.2 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. 3651(d).

Former N.J.A.C. 12:235-4.2, Assignment to supervisory positions, recodified to N.J.A.C. 12:235-9.2.

#### **12:235-4.3 Contents of the application**

(a) The application for an informal hearing shall contain:

1. The worker's name, address, age, and social security number;
2. The employer's name and address;
3. The name of the employer's insurance carrier, if any;
4. The date of the accident;
5. A brief description of how the accident occurred;
6. A brief description of the injury.

Recodified from N.J.A.C. 12:235-6.3 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. 12:235-4.3, Personnel functions, recodified to N.J.A.C. 12:235-9.3.

#### **12:235-4.4 Scheduling of informal hearings**

(a) Upon receipt of the completed application the Division shall schedule the matter as soon as practicable.

(b) The Division shall give written notice of the time, place and name of the assigned Judge of Compensation to all parties involved in the controversy. In addition, the Division shall include, with the notice to the worker that is the subject of the proceeding, an informational brochure explaining the nature of the proceedings and the rights of the parties involved. The form brochure shall be as set forth in N.J.A.C. 12:235-14.1.

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 N.J.A.C. 12:235-6.4 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 (b).

**12:235-4.5 Attendance at hearing**

The worker's attorney, employer, insurance carrier, or self-insured shall provide sufficient personnel to insure prompt attendance at the scheduled time and place of the hearing to expeditiously handle all listed cases.

Recodified from N.J.A.C. 12:235-6.5 by R.2002 d.340, effective October 21, 2002.

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

**12:235-4.6 Representative of employer or carrier**

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the Judge of Compensation at the time of the 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.

Recodified from N.J.A.C. 12:235-6.6 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).

**12:235-4.7 Registration of representatives for employers or carriers**

(a) Each employer, carrier, or self-insured shall submit to the Director for distribution to all Judges of Compensation a list of each individual who will represent them at informal hearings.

(b) Each employer, carrier, or self-insured shall indicate that such individuals shall have the authority to represent and agree to settle on behalf of the respondent at informal proceedings.

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 N.J.A.C. 12:235-6.7 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).

**12:235-4.8 Representation of claimant**

Only an attorney at law licensed to practice in the State of New Jersey shall act as an attorney for a worker in any informal hearing.

Recodified from N.J.A.C. 12:235-6.8 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).

Deleted the paragraph identifier in (a); deleted (b).

**12:235-4.9 Procedure where employer has no insurance**

Where it is brought to the attention of the Judge of Compensation that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the Director for appropriate action.

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

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

Text on appearance by persons convicted of crime deleted; text on procedure when employer has no insurance recodified from 6.11.

Recodified from N.J.A.C. 12:235-6.10 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).

**12:235-4.10 Allowance of attorney fees**

(a) A Judge of Compensation conducting informal hearings may allow counsel a fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.

(b) The fee in (a) above shall be payable by the worker.

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

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

Text on procedure when employer has no insurance recodified to 6.10; text on allowance of attorney fees recodified from 6.12.

Recodified from N.J.A.C. 12:235-6.11 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).

**12:235-4.11 Commencement of informal hearings**

(a) Hearings shall be conducted by a Judge of Compensation designated by the Director.

(b) Hearings shall commence promptly at the time and place designated in the notice of informal hearing by a call of the daily court to ascertain the presence of all parties to the controversy and to identify those cases ready for disposition.

(c) Upon completion of the daily call, the Judge of Compensation shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments the Judge feels are warranted.

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

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

Recodified from N.J.A.C. 12:235-6.12 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).

Text on allowance of attorney fees recodified to 6.11; text on commencement of informal hearings recodified from 6.13.

**12:235-4.12 Determination of issues**

(a) Upon a review of the application for the informal hearing and any supporting documents, the Judge of Compensation shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy as to unpaid temporary disability benefits and/or medical expenses.

(b) After a review of medical records or evaluation reports or both submitted by the parties and having personally inquired of the worker as to all present complaints, the Judge of Compensation shall make recommendations regarding permanent disability.