

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.

12:235-8.3 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 9. DISCRIMINATION COMPLAINTS

12:235-9.1 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.

12:235-9.2 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.

12:235-9.3 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.

12:235-9.4 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".

12:235-9.5 (Reserved)

Repealed by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).
Section was "Action by the commissioner".

SUBCHAPTER 10. ACCIDENT REPORTS

12:235-10.1 Employer's first report of accidental injury or occupational disease

(a) The employer's first report of accidental injury or occupational disease shall be filed by all employers no later than the start of the second work day after the injury occurred 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.