

[First Reprint]

ASSEMBLY, No. 508

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Concerns workers' compensation insurance requirements for certain corporations and partnerships.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on December 14, 2020, with amendments.



(Sponsorship Updated As Of: 12/16/2020)

1 **AN ACT** concerning workers' compensation insurance requirements
2 and amending R.S.34:15-36.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.34:15-36 is amended to read as follows:

8 34:15-36. "Willful negligence" within the intent of this chapter
9 shall consist of (1) deliberate act or deliberate failure to act, or (2) such
10 conduct as evidences reckless indifference to safety, or (3)
11 intoxication, operating as the proximate cause of injury, or (4)
12 unlawful use of a controlled dangerous substance as defined in the
13 "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226
14 (C.24:21-1 et seq.).

15 "Employer" is declared to be synonymous with master, and
16 includes natural persons, partnerships, and corporations¹ **], except that,**
17 notwithstanding any other provision of this section, "employer" shall
18 not mean a partnership that consists of only two partners if there is no
19 other individual or individuals who perform services for the
20 partnership]¹; "employee" is synonymous with servant, and includes
21 all natural persons, including officers of corporations, who perform
22 service for an employer for financial consideration, exclusive of (1)
23 employees eligible under the federal "Longshore and Harbor Workers'
24 Compensation Act," 44 Stat. 1424 (33 U.S.C.s.901 et seq.), for
25 benefits payable with respect to accidental death or injury, or
26 occupational disease or infection; and (2) casual employments, which
27 shall be defined, if in connection with the employer's business, as
28 employment the occasion for which arises by chance or is purely
29 accidental; or if not in connection with any business of the employer,
30 as employment not regular, periodic or recurring; provided, however,
31 that forest fire wardens and forest firefighters employed by the State of
32 New Jersey shall, in no event, be deemed casual employees.

33 A self-employed person, partners of a limited liability partnership,
34 members of a limited liability company or partners of a partnership
35 who actively perform services on behalf of the self-employed person's
36 business, the limited liability partnership, limited liability company or
37 the partnership shall be deemed an "employee" of the business, limited
38 liability partnership, limited liability company or partnership for
39 purposes of receipt of benefits and payment of premiums pursuant to
40 this chapter, if the business, limited liability partnership, limited
41 liability company or partnership elects, when the workers'
42 compensation policy of the business, limited liability partnership,
43 limited liability company or partnership is purchased or renewed, to
44 obtain coverage for the person, the limited liability partners, the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted December 14, 2020.

1 limited liability company members or the partners. If the business,
2 limited liability partnership, limited liability company or partnership
3 elects to obtain coverage for the self-employed person, limited liability
4 partners, limited liability company members or the partners, the
5 election may only be made at purchase or at renewal and may not be
6 withdrawn during the policy term. If the business, limited liability
7 partnership, limited liability company or partnership performs services
8 covered under a homeowner's policy or other policies providing
9 comprehensive personal liability insurance for domestic servants,
10 household employees or the dependents thereof, the workers'
11 compensation policy of the business, limited liability partnership,
12 limited liability company or partnership shall have primary
13 responsibility for the payment of benefits. Notwithstanding the
14 provisions of R.S.34:15-71 and 34:15-72, the business, limited liability
15 partnership, limited liability company or partnership shall not be
16 required to purchase a policy unless the business, limited liability
17 partnership, limited liability company or partnership is an "employer"
18 of **[a]** at least one employee as defined in this section who is not a
19 self-employed person, limited liability partner, limited liability
20 company member or partner actively performing services on behalf of
21 the business, limited liability partnership, limited liability company or
22 partnership.

23 An individual who is the only individual performing services for
24 an S corporation and is the only shareholder in the corporation shall
25 'not' be deemed an "employee" of the corporation for purposes of
26 receipt of benefits and payment of premiums pursuant to R.S.34:15-1
27 et seq.,¹ if the corporation elects, when the workers' compensation
28 policy of the corporation is purchased or renewed, to obtain coverage
29 for the individual. If the corporation elects to obtain coverage for the
30 individual, the election may only be made at the time of purchase or
31 renewal and may not be withdrawn during the policy term. If the
32 corporation performs services covered under a homeowner's policy or
33 other policies providing comprehensive personal liability insurance for
34 domestic servants, household employees or the dependents thereof, the
35 workers' compensation policy of the corporation shall have primary
36 responsibility for the payment of benefits] unless the corporation
37 elects, to obtain coverage for the individual¹. This paragraph shall not
38 be construed as modifying in any way the status of any individual or
39 corporation with respect to any tax or other law other than the
40 workers' compensation law.

41 Notwithstanding any other provision of law to the contrary, no
42 insurer or insurance producer as defined in section **[2 of P.L.1987,**
43 **c.293 (C.17:22A-2)]** 3 of P.L.2001, c.210 (C.17:22A-28) shall be
44 liable in an action for damages on account of the failure of a business,
45 limited liability partnership, limited liability company or partnership to
46 elect to obtain workers' compensation coverage for a self-employed
47 person, limited liability partner, limited liability company member or
48 partner, unless the insurer or insurance producer causes damage by a

1 willful, wanton or grossly negligent act of commission or omission.
2 Every application for workers' compensation made on or after the
3 effective date of this amendatory act shall include notice, as approved
4 by the Commissioner of Banking and Insurance, concerning the
5 availability of workers' compensation coverage for self-employed
6 persons, limited liability partners, limited liability company members
7 or partners. That application shall also contain a notice of election of
8 coverage and shall clearly state that coverage for self-employed
9 persons, limited liability partners, limited liability company members
10 and partners shall not be provided under the policy unless the
11 application containing the notice of election is executed and filed with
12 the insurer or insurance producer. The application containing the
13 notice of election shall also contain a statement that the insurer or
14 insurance producer shall not be liable in an action for damages on
15 account of the failure of a business, limited liability partnership,
16 limited liability company or partnership to elect to obtain workers'
17 compensation coverage for a self-employed person, limited liability
18 partner, limited liability company member or partner, unless the
19 insurer or insurance producer causes damage by a willful, wanton or
20 grossly negligent act of commission or omission. The failure of a self-
21 employed person, limited liability partnership, limited liability
22 company or partnership to elect to obtain workers' compensation
23 coverage for the self-employed person, the limited liability partners,
24 the limited liability company members or the partners shall not affect
25 benefits available under any other accident or health policy.

26 Employment shall be deemed to commence when an employee
27 arrives at the employer's place of employment to report for work and
28 shall terminate when the employee leaves the employer's place of
29 employment, excluding areas not under the control of the employer;
30 provided, however, when the employee is required by the employer to
31 be away from the employer's place of employment, the employee shall
32 be deemed to be in the course of employment when the employee is
33 engaged in the direct performance of duties assigned or directed by the
34 employer; but the employment of employee paid travel time by an
35 employer for time spent traveling to and from a job site or of any
36 employee who utilizes an employer authorized vehicle shall
37 commence and terminate with the time spent traveling to and from a
38 job site or the authorized operation of a vehicle on business authorized
39 by the employer. Travel by a policeman, fireman, or a member of a
40 first aid or rescue squad, in responding to and returning from an
41 emergency, shall be deemed to be in the course of employment.

42 Employment shall also be deemed to commence when an
43 employee is traveling in a ridesharing arrangement between his or her
44 place of residence or terminal near such place and his or her place of
45 employment, if one of the following conditions is satisfied: the vehicle
46 used in the ridesharing arrangement is owned, leased or contracted for
47 by the employer, or the employee is required by the employer to travel
48 in a ridesharing arrangement as a condition of employment.

1 "Disability permanent in quality and partial in character" means a
2 permanent impairment caused by a compensable accident or
3 compensable occupational disease, based upon demonstrable objective
4 medical evidence, which restricts the function of the body or of its
5 members or organs; included in the criteria which shall be considered
6 shall be whether there has been a lessening to a material degree of an
7 employee's working ability. Subject to the above provisions, nothing
8 in this definition shall be construed to preclude benefits to a worker
9 who returns to work following a compensable accident even if there be
10 no reduction in earnings. Injuries such as minor lacerations, minor
11 contusions, minor sprains, and scars which do not constitute
12 significant permanent disfigurement, and occupational disease of a
13 minor nature such as mild dermatitis and mild bronchitis shall not
14 constitute permanent disability within the meaning of this definition.

15 "Disability permanent in quality and total in character" means a
16 physical or neuropsychiatric total permanent impairment caused by a
17 compensable accident or compensable occupational disease, where no
18 fundamental or marked improvement in such condition can be
19 reasonably expected.

20 Factors other than physical and neuropsychiatric impairments may
21 be considered in the determination of permanent total disability, where
22 such physical and neuropsychiatric impairments constitute at least
23 75% or higher of total disability.

24 "Ridesharing" means the transportation of persons in a motor
25 vehicle, with a maximum carrying capacity of not more than 15
26 passengers, including the driver, where such transportation is
27 incidental to the purpose of the driver. This term shall include such
28 ridesharing arrangements known as carpools and vanpools.

29 "Medical services, medical treatment, physicians' services and
30 physicians' treatment" shall include, but not be limited to, the services
31 which a chiropractor is authorized by law to perform and which are
32 authorized by an employer pursuant to the provisions of R.S.34:15-1 et
33 seq.

34 "S corporation" means a corporation included in the definition of
35 an "S corporation" pursuant to section 1361 of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.1361.
37 (cf: P.L.1999, c.383, s.1)
38

39 2. This act shall take effect ¹**【immediately】** on the 180th day
40 following enactment and apply to all policies issued on or after that
41 date¹.