ASSEMBLY, No. 777

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman BRIAN E. RUMPF
District 9 (Atlantic, Burlington and Ocean)
Assemblywoman DIANNE C. GOVE
District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Prevents intoxicated employees from receiving workers' compensation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT preventing intoxicated employees from receiving workers' compensation and amending R.S.34:15-7.

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

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

R.S.34:15-7. a. When employer and employee shall by agreement, either express or implied, as hereinafter provided, accept the provisions of this article compensation for personal injuries to, or for the death of, such employee by accident arising out of and in the course of employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in **[**sections**]** R.S.34:15-12 and R.S.34:15-13 **[**of this Title**]** in all cases **[**except when**]** unless:

(1) the injury or death is intentionally self-inflicted**[**, or when intoxication or**]**;

(2) the injury or death occurs as a result of intoxication;

(3) the intoxication is a material contributing factor to the injury or death;

(4) the unlawful use of controlled dangerous substances as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.266 (C.24:21-1 et seq.), **[**or**]** is a natural and proximate cause of the injury or death;

(5) the willful failure to make use of a reasonable and proper personal protective device or devices furnished by the employer, which has or have been clearly made a requirement of the employee's employment by the employer and uniformly enforced and which an employer can properly document that despite repeated warnings, the employee has willfully failed to properly and effectively utilize, is the natural and proximate cause of injury or death provided, however, **[**this latter provision**]** that the provisions of this paragraph (5) shall not apply where there is such imminent danger or need for immediate action which does not allow for appropriate use of personal protective device or devices, and the burden of the proof of such fact shall be upon the employer; or **[**when**]**

(6) recreational or social activities, **[**unless such**]** other than recreational or social activities which are a regular incident of employment and produce a benefit to the employer beyond improvement in employee health and morale, are the natural and proximate cause of the injury or death.

b. If the employee was intoxicated when the injury or death occurred, it shall be presumed that the injury or death was caused

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.

by the intoxication and the employee shall be barred from receiving workers' compensation.
(cf: P.L.1979, c.283, s.1)

2. This act shall take effect immediately.

STATEMENT

This bill amends the workers' compensation law to provide that if an employee was intoxicated when the injury or death occurred, it is presumed that the injury or death was caused by the intoxication and the employee will be barred from receiving workers' compensation.

This bill is, in part, a response to the recent New Jersey Supreme Court case of Tlumac v. High Bridge Stone, 187 N.J. 567 (2006), in which the Court reaffirmed a long standing rule that held intoxication must be the "sole cause" of an accident in order to deprive an employee of workers' compensation benefits. In its decision, the Court stated that its role is to "effectuate the will of the Legislature" and concluded that any changes to the workers' compensation system must be done through legislation. Moreover, the Court noted that the workers' compensation law was created in 1911 and "may no longer comport with current policies."