

ASSEMBLY, No. 1047

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Changes ratio for earnings offset of workers' compensation permanent total disability benefit payments.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning certain workers' compensation benefits and
2 amending R.S.34:15-12.

3

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

6

7 1. R.S.34:15-12 is amended to read as follows:

8 34:15-12. Following is a schedule of compensation:

9 a. For injury producing temporary disability, 70% of the
10 worker's weekly wages received at the time of the injury, subject to
11 a maximum compensation of 75% of the average weekly wages
12 earned by all employees covered by the "unemployment
13 compensation law" (R.S.43:21-1 et seq.) and a minimum of 20% of
14 such average weekly wages a week. This compensation shall be
15 paid during the period of such disability, not however, beyond 400
16 weeks. The amount of the maximum compensation shall be
17 computed, determined, rounded out to the nearest dollar, and
18 promulgated by the Commissioner of Labor on or before September
19 1 in each year based on said average weekly wages as of the
20 calendar year preceding, and shall be effective as to injuries
21 occurring in the calendar year following such promulgation. In any
22 year in which the maximum benefit rate based upon said
23 computation would not be increased or decreased beyond \$1.00 in
24 amount, the rate promulgated theretofore shall continue.

25 b. For disability total in character and permanent in quality,
26 70% of the weekly wages received at the time of injury, subject to a
27 maximum and a minimum compensation as stated in subsection a.
28 of this section. This compensation shall be paid for a period of 450
29 weeks, at which time compensation payments shall cease unless the
30 employee shall have submitted to such physical or educational
31 rehabilitation as may have been ordered by the rehabilitation
32 commission, and can show that because of such disability it is
33 impossible for the employee to obtain wages or earnings equal to
34 those earned at the time of the accident, in which case further
35 weekly payments shall be made during the period of such disability,
36 the amount thereof to be the previous weekly compensation, until
37 the employee earns greater than \$500 per week. The employee's
38 benefit payment shall then be diminished by **that portion thereof**
39 **that** the **wage,** current wages or earnings **of** the employee **is**
40 then able to earn, bears to the wages received at the time of the
41 accident **at a rate of \$1 for every \$2 earned above \$500 in a given**
42 **week.** **If the employee's wages or earnings equal or exceed wages**
43 **received at the time of the accident, then the compensation rate**
44 **shall be reduced to \$5.00.** In calculating compensation for this
45 extension beyond 450 weeks the above minimum provision shall

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.

1 not apply. This extension of compensation payments beyond 450
2 weeks shall be subject to such periodic reconsiderations and
3 extensions as the case may require, and shall apply only to
4 disability total in character and permanent in quality, and shall not
5 apply to any accident occurring prior to July 4, 1923.

6 c. For disability partial in character and permanent in quality,
7 weekly compensation shall be paid based upon 70% of the weekly
8 wages received at the time of the injury, subject to a maximum
9 compensation per week of 75% of the Statewide average weekly
10 wages (SAWW) earned by all employees covered by the
11 "unemployment compensation law" (R.S.43:21-1 et seq.) and paid
12 in accordance with the following "Disability Wage and
13 Compensation Schedule" and a minimum of \$35.00 per week. The
14 amount of awards for up to and including 180 weeks shall remain at
15 the amounts listed in the "Disability Wage and Compensation
16 Schedule" until January 1, 1982. On January 1, 1982, the dollar
17 amounts listed for the first 180 weeks in the "Disability Wage and
18 Compensation Schedule" shall be replaced by the following
19 percentages of the Statewide average weekly wage:

20	\$47-20% of the Statewide	\$61-26% SAWW
21	average weekly	\$63-27% SAWW
22	wages, hereinafter	\$66-28% SAWW
23	referred to as "SAWW"	\$68-29% SAWW
24	\$49-21% SAWW	\$70-30% SAWW
25	\$51-22% SAWW	\$73-31% SAWW
26	\$54-23% SAWW	\$75-32% SAWW
27	\$56-24% SAWW	\$77-33% SAWW
28	\$59-25% SAWW	\$80-34% SAWW
29		\$82-35% SAWW

30 In the event that the 20% limitation for attorney fees as set forth
31 in R.S.34:15-64 is reduced to a maximum of 10% before January 1,
32 1982, the above schedule shall be effective within 60 days of such
33 reduction in attorney fees. All amounts in the "Disability Wage and
34 Compensation Schedule" shall be rounded out to the nearest dollar.
35 When a claim petition alleges more than one disability, the number
36 of weeks in the award shall be determined and entered separately
37 for each such disability and the number of weeks for each disability
38 shall not be cumulative when entering an award.

39 DISABILITY WAGE AND COMPENSATION SCHEDULE

40	Weeks of Allowable	Maximum Weekly Compensation
41	Compensation	Applicable
42	First 90 weeks. . . .	\$47
43	91 through 96 weeks. .	\$49
44	97 through 102 weeks. .	\$49 for the first 96 weeks then \$51
45		for each remaining week
46	103 through 108 weeks .	\$49 for the first 96 weeks then \$51
47		for the next 6 weeks then \$54 for

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1		each remaining week 109-114 weeks . .
2	...	\$49 for the first 96 weeks then
3		\$51 for the next 6 weeks then \$54
4		for the next 6 weeks then \$56 for
5		each remaining week
6	115-120 weeks	\$49 for the first 96 weeks
7		then \$51 for the next 6 weeks
8		then \$54 for the next 6 weeks
9		then \$56 for the next 6 weeks
10		then \$59 for each remaining week
11	121-126 weeks	\$49 for the first 96 weeks
12		then \$51 for the next 6 weeks
13		then \$54 for the next 6 weeks
14		then \$56 for the next 6 weeks
15		then \$59 for the next 6 weeks
16		then \$61 for each remaining week
17	127-132 weeks	\$49 for the first 96 weeks
18		then \$51 for the next 6 weeks
19		then \$54 for the next 6 weeks
20		then \$56 for the next 6 weeks
21		then \$59 for the next 6 weeks
22		then \$61 for the next 6 weeks
23		then \$63 for each remaining week
24	133-138 weeks	\$49 for the first 96 weeks
25		then \$51 for the next 6 weeks
26		then \$54 for the next 6 weeks
27		then \$56 for the next 6 weeks
28		then \$59 for the next 6 weeks
29		then \$61 for the next 6 weeks
30		then \$63 for the next 6 weeks
31		then \$66 for each remaining week
32	139-144 weeks	\$49 for the first 96 weeks
33		then \$51 for the next 6 weeks
34		then \$54 for the next 6 weeks
35		then \$56 for the next 6 weeks
36		then \$59 for the next 6 weeks
37		then \$61 for the next 6 weeks
38		then \$63 for the next 6 weeks
39		then \$66 for the next 6 weeks
40		then \$68 for each remaining week
41	145-150 weeks	\$49 for the first 96 weeks
42		then \$51 for the next 6 weeks
43		then \$54 for the next 6 weeks
44		then \$56 for the next 6 weeks
45		then \$59 for the next 6 weeks
46		then \$61 for the next 6 weeks
47		then \$63 for the next 6 weeks
48		then \$66 for the next 6 weeks

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1		then \$68 for the next 6 weeks
2		then \$70 for each remaining week
3	151-156 weeks	\$49 for the first 96 weeks
4		then \$51 for the next 6 weeks
5		then \$54 for the next 6 weeks
6		then \$56 for the next 6 weeks
7		then \$59 for the next 6 weeks
8		then \$61 for the next 6 weeks
9		then \$63 for the next 6 weeks
10		then \$66 for the next 6 weeks
11		then \$68 for the next 6 weeks
12		then \$70 for the next 6 weeks
13		then \$73 for each remaining week
14	157-162 weeks	\$49 for the first 96 weeks
15		then \$51 for the next 6 weeks
16		then \$54 for the next 6 weeks
17		then \$56 for the next 6 weeks
18		then \$59 for the next 6 weeks
19		then \$61 for the next 6 weeks
20		then \$63 for the next 6 weeks
21		then \$66 for the next 6 weeks
22		then \$68 for the next 6 weeks
23		then \$70 for the next 6 weeks
24		then \$73 for the next 6 weeks
25		then \$75 for each remaining week
26	163-168 weeks	\$49 for the first 96 weeks
27		then \$51 for the next 6 weeks
28		then \$54 for the next 6 weeks
29		then \$56 for the next 6 weeks
30		then \$59 for the next 6 weeks
31		then \$61 for the next 6 weeks
32		then \$63 for the next 6 weeks
33		then \$66 for the next 6 weeks
34		then \$68 for the next 6 weeks
35		then \$70 for the next 6 weeks
36		then \$73 for the next 6 weeks
37		then \$75 for the next 6 weeks
38		then \$77 for each remaining week
39	169-174 weeks	\$49 for the first 96 weeks
40		then \$51 for the next 6 weeks
41		then \$54 for the next 6 weeks
42		then \$56 for the next 6 weeks
43		then \$59 for the next 6 weeks
44		then \$61 for the next 6 weeks
45		then \$63 for the next 6 weeks
46		then \$66 for the next 6 weeks
47		then \$68 for the next 6 weeks
48		then \$70 for the next 6 weeks

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1		then \$73 for the next 6 weeks
2		then \$75 for the next 6 weeks
3		then \$77 for the next 6 weeks
4		then \$80 for each remaining week
5	175-180 weeks	\$49 for the first 96 weeks
6		then \$51 for the next 6 weeks
7		then \$54 for the next 6 weeks
8		then \$56 for the next 6 weeks
9		then \$59 for the next 6 weeks
10		then \$61 for the next 6 weeks
11		then \$63 for the next 6 weeks
12		then \$66 for the next 6 weeks
13		then \$68 for the next 6 weeks
14		then \$70 for the next 6 weeks
15		then \$73 for the next 6 weeks
16		then \$75 for the next 6 weeks
17		then \$77 for the next 6 weeks
18		then \$80 for the next 6 weeks
19		then \$82 for each remaining week
20	181-210 weeks	35% of the Statewide average
21		weekly wages, hereinafter referred
22		to as "SAWW"
23	211-240 weeks	40% of SAWW
24	241-270 weeks	45% of SAWW
25	271-300 weeks	50% of SAWW
26	301-330 weeks	55% of SAWW
27	331-360 weeks	60% of SAWW
28	361-390 weeks	65% of SAWW
29	391-420 weeks	70% of SAWW
30	421-600 weeks	75% of SAWW
31	Said compensation shall be expressly subject to the provisions of	
32	R.S.34:15-37, and shall be paid to the employee for the period	
33	named in the following schedule (paragraphs 1 to 23 inclusive):	
34	Lost Member	Number of Weeks'
35		Compensation
36	1. Thumb	75
37	2. First finger (commonly called index finger). . .	50
38	3. Second finger	40
39	4. Third finger.	30
40	5. Fourth finger (commonly called little finger) . .	20
41	6. Great toe	40
42	7. Toe, other than a great toe.	15
43	8. Hand, or thumb and first and second fingers	
44	(on one hand) or four fingers (on one hand). . .	245
45	9. Arm	330
46	10. Foot.	230
47	11. Leg	315

- 1 12. The loss of the first phalange of the thumb or of any finger
2 shall be considered to be equal to the loss of 1/2 of such thumb or
3 finger, and the compensation shall be for 1/2 of the periods of time
4 above specified. The loss of any portion of the thumb or any finger
5 between the terminal joint and the end thereof shall be compensated
6 for a like proportion of the period of time prescribed for the loss of
7 the first phalange of such member.
- 8 13. The loss of the first phalange and any portion of the second
9 shall be considered as the loss of the entire finger or thumb, but in
10 no case shall the amount received for more than one finger exceed
11 the amount provided in this schedule for the loss of a hand.
- 12 14. The loss of the first phalange of any toe shall be considered
13 to be equal to the loss of 1/2 of such toe, and compensation shall be
14 for 1/2 of the period of time above specified.
- 15 15. The loss of the first phalange and any portion of the second
16 shall be considered as the loss of the entire toe.
- 17 16. For the loss of vision of an eye, 200 weeks.
- 18 17. For the enucleation of an eye, 25 weeks, in addition to such
19 compensation, if any, as may be allowable under paragraph 16 of
20 this subsection.
- 21 18. For the loss of a natural tooth, four weeks for each tooth
22 lost.
- 23 19. For the total loss of hearing in one ear, 60 weeks. For the
24 total loss of hearing in both ears by one accident, 200 weeks.
- 25 20. The loss of both hands, or both arms, or both feet, or both
26 legs, or both eyes, or any two thereof as the result of any one
27 accident, shall constitute total and permanent disability to be
28 compensated according to the provisions of subsection b. of this
29 section.
- 30 21. Amputation between the elbow and the wrist shall be
31 considered as the equivalent of the loss of a hand and amputation at
32 the elbow shall be considered equivalent to the loss of the arm.
33 Amputation between the knee and ankle shall be considered as the
34 equivalent of the loss of a foot, and amputation at the knee shall be
35 considered equivalent to the loss of the leg. An additional amount
36 of 30% of the amputation award shall be added to that award to
37 compute the total award made in amputations of body members,
38 provided, however, that this additional amount shall not be subject
39 to legal fees.
- 40 22. In all lesser or other cases involving permanent loss, or
41 where the usefulness of a member or any physical function is
42 permanently impaired, the duration of compensation shall bear such
43 relation to the specific periods of time stated in the above schedule
44 as the disabilities bear to those produced by the injuries named in
45 the schedule. In cases in which the disability is determined as a
46 percentage of total and permanent disability, the duration of the
47 compensation shall be a corresponding portion of 600 weeks.
48 Should the employer and employee be unable to agree upon the

1 amount of compensation to be paid in cases not covered by the
2 schedule, either party may appeal to the Division of Workers'
3 Compensation for a settlement of the controversy.

4 23. Where there is a traumatic hernia, compensation will be
5 allowed if notice thereof is given by the claimant to the employer
6 within 48 hours after the occurrence of the hernia but any Sunday,
7 Saturday or holiday shall be excluded from this 48-hour period.

8 d. If previous loss of function to the body, head, a member or
9 an organ is established by competent evidence, and subsequently an
10 injury or occupational disease arising out of and in the course of an
11 employment occurs to that part of the body, head, member or organ,
12 where there was a previous loss of function, then the employer or
13 the employer's insurance carrier at the time of the subsequent injury
14 or occupational disease shall not be liable for any such loss and
15 credit shall be given the employer or the employer's insurance
16 carrier for the previous loss of function and the burden of proof in
17 such matters shall rest on the employer.

18 e. In case of the death of the person from any cause other than
19 the accident or occupational disease, during the period of payments
20 for permanent injury, the remaining payments shall be paid to such
21 of the deceased person's dependents as are included in the
22 provisions of R.S.34:15-13 or, if no dependents, the remaining
23 amount due, but not exceeding \$3,500.00, shall be paid in a lump
24 sum to the proper person for burial and funeral expenses; but no
25 compensation shall be due any other person than the injured
26 employee on account of compensation being paid in excess of 450
27 weeks on account of disability total in character and permanent in
28 quality as provided by subsection b. of this section.

29 (cf: P.L.1990, c.122, s.1)

30
31 2. This act shall take effect immediately.
32
33

34 STATEMENT

35
36 This bill changes the ratio for the offset of workers compensation
37 permanent total disability benefit payments by the amount of wages
38 earned by an individual receiving those benefits.

39 Current law provides that permanent total disability is paid for a
40 period of 450 weeks. Following the 450-week period of payments,
41 an individual may continue to receive payments if the individual
42 can show that because of the disability it is impossible to obtain
43 wages or earnings equal to those earned at the time of the accident.
44 Current law provides that these continued payments are diminished
45 by any wages earned by the individual at a ratio of 1 to 1. The bill
46 provides that benefit payments shall not be offset for the first \$500
47 dollars an individual earns during a week. The individual's benefit
48 payment is then diminished by the wages or earnings of the

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- 1 employee at a rate of \$1 for every \$2 earned above \$500 in a given
- 2 week.